15

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

No. [redacted]56.

WILLIAM WOODSIDE, PLAINTIFF IN ERROR,

vs.

ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

FILED JANUARY 17, 1908.

(20,979.)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 252.

WILLIAM WOODSIDE, PLAINTIFF IN ERROR,

vs.

ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

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1 THE UNITED STATES OF AMERICA.
Northern District of Iowa:

Pleas before the Circuit Court of the United States in and for the Northern District of Iowa, Cedar Rapids Division, at a term begun and holden at Cedar Rapids, in said District, on the 2nd Tuesday of September, A. D. 1905, in said District, before the Hon. Henry T. Reed, Judge of the Northern District of Iowa.

No. 168 Law.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRKS, E. H. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHULTE, L. J. ROWEL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Be it remembered, That heretofore to-wit on the 29th day of January A. D. 1904, a petition in foregoing entitled cause was filed in the office of the Clerk of the Circuit Court of the United States in and for the Northern District of Iowa, Cedar Rapids Division: in words and figures following, to-wit:

2 In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRKS, E. H. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHULTE, L. J. ROWEL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Complaint.

Plaintiff complains of the defendants and alleges;

That plaintiff is a resident and citizen of the State of Colorado, and that the above named defendants, and each of them, are residents and citizens of the State of Iowa, and said division of said Court.

That the amount and value in controversy in this action exceeds the sum of Two Thousand dollars, exclusive of interest and costs.

That the Neptune Mining Company, is a mining corporation organized and existing under the laws of the State of Colorado, and was at all the times hereinafter mentioned, authorized to do business in said State of Colorado, and subject to the laws thereof;

That said corporation was organized and became a corporation of and in the said State of Colorado on the 27th day of November A. D. 1901, having a stated capital stock of One Million dollars in one million shares of One dollars each;

That the defendants above named, and each of them, were, during the sixty days next after the first day of January A. D. 1903, the duly chosen, qualified and acting Directors of the said corporation, The Neptune Mining Company, and members of the Board of Directors of said corporation and were and continued to be such Directors from and including the first day of January A. D. 1903, and thereafter for a period of more than sixty days, and continued to be such Directors until the commencement of this action;

That by an Act of the General Assembly of the State of Colorado approved and in force from and after April 6th, A. D. 1901, and in force at all times since said date, and still in force, and which Act was entitled: "An Act relating to corporations, and prescribing certain fees to be paid by corporations, foreign and domestic, and to repeal certain acts and all acts and parts of acts in conflict herewith;" it was provided as follows:

"SEC. 11. Every corporation, joint stock company or association, incorporated by or under any general or special law of this state, or by any general or special law of any foreign state or kingdom, or of any state or territory of the United States, beyond the limits of this state, shall, within sixty days next after the first day of January in each year, commencing with the year 1902, make and file an annual report in the office of the secretary of state, showing,

First. The names of its officers and their several places of residence, together with the street or business address of such officer.

Second. The names of its directors or trustees and their several places of residence, together with the street or business address of such director or trustee.

Third. The amount of its capital stock as fixed and determined by its articles of incorporation and amendments thereto.

Fourth. The proportion of said capital stock actually paid in.

4 Fifth. Setting forth how the same was paid, whether in cash, by the purchase of property, or otherwise.

Sixth. The amount of the indebtedness of said corporation at the date of filing said report.

Seventh. Setting forth whether or not it is engaged in the active operation of its business within the State of Colorado.

Eighth. Such other information as will show with reasonable fullness and certainty the condition of its real and personal property, and the financial condition of such corporation, joint stock company or association at the date of filing such report.

And if such corporation be a mining corporation, engaged in mining or mining and milling the precious metals, in addition to the requirements above set forth, such mining corporation shall also set forth:

First. The amount of its properties within this state, and where the same are located.

Second. Whether or not the same are held under letters patent of the United States, and if so, what amount thereof.

Third. Whether or not the same are held by possessory right on the public domain, setting forth the amount thereof.

Fourth. Also stating in general terms the amount of work done thereon and improvements made thereon since the time of filing the last annual report.

* * * * * * *

Which report in each case shall be signed by the president, and be verified by the oath of the president and secretary of said company, under its corporate seal.

Every such corporation, joint stock company or association shall pay to the secretary of state, for the state as a fee for examining and filing such reports, as follows:

All ditch or canal companies having a capital stock of fifty thousand dollars or less, one dollar.

All corporations not for pecuniary profit, or corporations organized for religious, educational, or benevolent purposes, one dollar.

All corporations with a capital stock of ten thousand dollars, or less, one dollar.

All other corporations, joint stock companies or associations, five dollars.

And if any such corporation, joint stock company, or association, shall fail, refuse or omit to file the annual report aforesaid, and to pay the fee prescribed therefor, within the time above prescribed, all the officers and directors of said corporation shall be jointly and severally and individually liable for all debts of such corporation, joint stock company or association that shall be contracted during the year next preceding the time when such report should by this section have been made and filed, and until such report shall be made and filed."

That by virtue of said act it became and was the duty of said corporation and the officers thereof to file said annual report within sixty days next after the first day of January A. D. 1903.

The said corporation did not file, or cause to be filed, and did fail and omit to file, the said annual report in the office of the Secretary of State for the State of Colorado, and wholly failed and omitted to file, or cause to be filed, the said annual report either within the said period, or at any other time prior to the commencement of this action.

That during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and said defendants, and each of them, were in default as to the filing of said report, the said corporation was carrying on the business of mining in said State of Colorado, and contracted debts of said corporation as hereinafter set forth.

That during the period aforesaid, and at divers times between the 1st day of August 1902, and the 1st day of March 1903, the said corporation incurred and contracted debts to and in favor of the following named persons, firms and corporations, each and all of whom were, at all the times herein mentioned, and still are, residents and citizens of the State of Colorado, for work and labor done and per-

formed, and for services rendered, and for moneys advanced and paid out in the sums and amounts as herein stated;

Ulley Camper, for labor and supplies, in the sum of.....	$92.60
Ben W. Gilmore, for work and labor, in the sum of.....	783.30
S. H. Pope, for labor, in the sum of.....	286.57
Roy Lacksley, for labor and supplies, in the sum of.....	326.50
Jerry Starr, for work and labor, in the sum of.....	120.75
The Vulcan Sheet Metal Co., a corporation organized under the laws of Colorado, and a citizen of said State, for goods and merchandise, in the sum of.....	360.63
John R. Smith, for services rendered, in the sum of.....	172.50
Ernest Gimler, for work and labor, in the sum of.....	407.85
H. E. Fossette, for labor, in the sum of.....	12.00

That each and every of the said debts and claims remained and still remain wholly unpaid, and that on divers days in the month of June A. D. 1903, each and every of said creditors sold, assigned and transferred his said claim and demand, for value received and in good faith to the plaintiff herein William Woodside.

That this plaintiff, brought an action against the said The Neptune Mining Company in the District Court of the State of Colorado in and for the County of Custer in said State, said Court being
7 a court of record of said State of general original jurisdiction, for the recovery of a judgment upon said demands, and all thereof, against said The Neptune Mining Company; that said Court had and obtained, by due, regular and sufficient service of process of said Court on said The Neptune Mining Company, full jurisdiction in said cause and over said The Neptune Mining Company, and that thereupon and in due course, the said cause came on regularly for hearing in said Court, and that this plaintiff, on the 3rd day of October 1902, recovered a judgment of and in the said Court in said cause, and against The Neptune Mining Company, for the sum of Twenty seven Hundred and Twenty four dollars and forty six cents ($2724.46) and costs to be taxed, based upon and for the recovery of the said demands, which said judgment was duly entered and recorded in said Court, and there remains of record, and that said judgment is still in force and wholly unsatisfied and the property of said plaintiff.

That the said defendants in this action as members of the Board of Directors of said The Neptune Mining Company, by reason of the premises and the failure and omission of said corporation to file its annual report as required by the laws of Colorado became and were, and still are jointly and severally and individually liable for the said debts, judgments and demands.

That interest accrued under the laws of Colorado, upon said claims as against said defendants as to the sum of $1943.98 of the said aggregate, at the rate of eight per cent. per annum from and after February 5th, 1903; and upon the sum of $60.63 thereof from Oct. 17 1902, at the same rate of interest.

And the said plaintiff stating the foregoing as a first cause of

action against the said defendants, prays for judgment against the said defendants, and each of them, upon said first cause of action, for the sum of $2,724.46 with interest thereon fro- the 3rd day of October A. D. 1903 at the rate of eight per cent. per annum.

8 And for a second cause of action, against the said defendants, plaintiff alleges that, as alleged in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of Colorado, and was such corporation at all the times therein stated, and that the defendants were directors thereof, at the times stateed and for and after the said first day of January, 1903, for a period of more than sixty days, and until the commencement of this action, and that under the laws of Colorado, as stated at length in said first cause of action, and to which reference is made, it was the duty of said corporation and its officers to file an annual report within sixty days next after the first day of January 1903, and that the said corporation and its officers did not file said annual report, or any annual report, within said period or at any time prior to the commencement of this action.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants, and each of them, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in said State of Colorado, and contracted debts of said corporation as hereinafter set forth; that during the periods aforesaid and at divers times between the 1st day of August 1902, and the 1st day of March 1903, the said corporation incurred and contracted debts to and in favor of the following named persons and corporations, each and all of whom were, at all times herein mentioned, and still are, residents and citizens of the State of Colorado, for work and labor done and performed, and for services rendered, and for money advanced and paid out in the sums and amounts as herein stated, to-wit:

9

To H. F. Knuth, and August Rasch, partners as the Westcliffe Hardware Co., for goods, wares, and supplies in the sum of	$259.97
To John Shortridge, for work and labor, in the sum of	162.75
To H. D. Mills, for work and labor, in the sum of	51.00
To John Blair, for work and labor, in the sum of	25.00
To A. N. Parnell, doing business under the name of The Florence Iron Works, for work and labor, in the sum of	21.96
To the Stearns-Rogers Manufacturing Company, a corporation organized and existing under the laws of Colorado, and a resident and citizen of Colorado, for goods, wares, and merchandise, in the sum of	73.92
To Mrs. E. F. Perry, for boarding man, in the sum of	108.50
To Thomas McConnell, for work and labor, in the sum of	70.00
To William Davis, for work and labor, in the sum of	52.00

That each and every of said debts and claims remained and still remain wholly unpaid; and that on divers days in the months of

June and July 1903, each and every of the said creditors, except The Westcliffe Hardware Company, sold, assigned and transferred his said claim and demand, for value received and in good faith, to the said firm of H. F. Knuth and August Rasch, who were the partners doing business under the name and style of The Westcliffe Hardware Company; that thereupon and on the 13th day of July 1903, the said The Westcliff Hardware Company, brought an action against the said The Neptune Mining Company in the District Court of the State of Colorado, in and for the County of Custer in said State, the said Court being a court of record of the said State of general original jurisdiction, for the recovery of a judgment upon the said demands and all thereof, against the said The Neptune Mining Company, that said Court has and obtained by due, regular and sufficient service of process of said Court on the said The Neptune Mining Company, full jurisdiction in said cause, and over said The Neptune Mining Company, and that thereupon and in due course the said cause came on regularly for hearing in said Court, and that the said The Westcliffe Hardware Company, on the 3rd day of October A. D. 1903, recovered a judgment of and in the said Court in the said cause and against the Neptune Mining Company, for the sum of Eight Hundred and Sixty Two Dollars and Thirty six cents ($862,36) and costs to be taxed based upon and for the recovery of the said demands, which said judgment was duly entered and recorded in said Court and there remained of record and that said judgment is still in force and wholly unsatisfied; and that afterwards, and on the 25th day of November A. D. 1903, the said plaintiff in said action, The Westcliffe Hardware Company, sold, assigned, and transferred its said judgment to this Plaintiff, William Woodside, for value received and in good faith, and that the said plaintiff William Woodside, is now the owner thereof; that the said defendants in this action, as members of the Board of Directors of the said The Neptune Mining Company, by reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation to file its annual report as required by the laws of Colorado, became and were and still are jointly and severally and individually liable for the debts, judgment and demand; that under the laws of Colorado the said judgment is entitled to draw interest after date at the rate of eight per cent. (8%) per annum.

Wherefore, plaintiff prays judgment on this second cause of action, for the sum of Eight Hundred and Sixty Two dollars and Thirty six cents ($862,36) and interest from October 3rd 1903, at the rate of eight per cent. (8%) per annum.

11 And for a Third Cause of Action, against the said defendants, plaintiff alleges that, as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all the times herein mentioned, and that the defendants were Directors thereof at all the times herein mentioned, and for and after the said first day of January A. D. 1903,

for a period of more than sixty days immediately following the said date and until the commencement of this action, and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of the said corporation and said officers to file an annual report within sixty days next after the 1st day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any annual report, within said period, or at any time prior to the commencement of this action, and that by reason of the failure refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers and Directors of the said corporation, and each of the defendants as a Director of the said corporation, became and were and still are jointly and severally and individually liable for all the debts of such corporation that were contracted during the year next preceding the time when such report should have been filed, to-wit within sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed and during the period when the said corporation and the said
12 defendants, and each of them, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in the said State of Colorado, and contracted debts of the said corporation as hereinafter set forth, and to the persons hereinafter named; that during the periods aforesaid, and at divers times during the year A. D. 1902, the said corporation incurred and contracted debts to and in favor of the following named persons and corporations, each and all of whom were, at all the times herein mentioned and still are, residents and citizens of the State of Colorado, for work and labor done and performed, and for services rendered, and for supplies furnished, and for money advanced and paid out, in the sums and amounts herein stated, all for the use and benefit and at the direct request of the said The Neptune Mining Company, as follows:

To The Hendrie & Bolthoff Manufacturing and Supply Company, a corporation organized under the laws of the State of Colorado and a resident and citizen thereof, for mining supplies sold and delivered to the Neptune Mining Company at its request, in the sum of	$293.24
To George B. Beardsley, for coal furnished	48.46
To Bruce Barry, for labor at the mine	54.00
To Henry Gline, for labor at the mine	31.50
To H. W. Foss, for coal and supplies	643.29
To Thomas Roberts, for labor at the mine	91.00
To S. F. Jordan, for assaying	7.50
To T. F. Ryan, for labor at the mine	11.25
To William B. Wadsworth, for teaming	222.00
To William Shellerberg, for labor at the mine	123.00
To Chas. N. Skevington, for labor at the mine	52.00

To J. W. Nelson, for labor at the mine..... ..... 6.00

To Frazier & Lemons, a firm consisting of W. R. Frazier and J. F. Lemons, for supplies furnished by them $298.80; and also for and on account of work and labor done and performed for the Neptune Mining Company by one D. T. Blinger, a resident & citizen of Colo-
13 rado, and for which a time check was issued by the said The Neptune Mining Company, and which was sold and assigned by the said Blinger to the said Frazier & Lemons, in the sum of $65.25 the total amount due from the Neptune Mining Company to the said Frazier & Lemons amounting to..... 364.05

That each and every of the said debts and claims, and all thereof, remained and still remain wholly unpaid; and that before the commencement of this action, each and every of the said creditors, sold, assigned and transferred their respective claims and demands as above stated, for value received and in good faith, to this plaintiff William Woodside, who is now the owner thereof; and that the said The Neptune Mining Company, and each of the said defendants as the Directors thereof, became and were and are indebted to this plaintiff for and on account thereof, and that especially the said defendants in this action, as members of the Board of Directors of the said The Neptune Mining Company by reason of the premises and under the laws of Colorado and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly severally and individually liable for the said debts and each and all thereof.

Wherefore plaintiff prays for judgment against the said defendants, and each of them, on this third cause of action for the sum of Nineteen Hundred Forty seven dollars and twenty nine cents, ($1,947.29).

And for a Fourth Cause of Action, against the said defendants, plaintiff alleges, that as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company, is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all the times herein mentioned, and that the defendants were Directors thereof, at all the times herein mentioned and for and after the said 1st day of Jan. A. D. 1903, for a period of
14 more than sixty days immediately following the said date and until the commencement of this action; and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of said corporation and said officers to file an annual report within sixty days next after the 1st day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any report, within said period, or at any time prior to the commencement of this action, and that by reason of the failure, refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers and Directors of the said corporation, and

each of the defendants as a Director of the said corporation, became and were and still are jointly and severally and individually liable for all the debts of such corporation that were contracted during the year next preceding the time — which such a report should have been filed to-wit, within sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that, as stated in the three preceding causes of action, and to which reference is hereby made, and during the period when the said corporation and the said defendants and each of the-, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in said State of Colorado, and contracting the debts to the different persons specifically named in the first, second and third causes of action in this complaint set forth and to which reference is hereby made; that each and all of the said persons were, at the time of the contracting of the said debts, and still are, citizens and residents of Colorado, and that each and every of the said creditors did, at the times and in the manner in the said three causes of action mentioned and set forth sell, assign and transfer the respective claim and demand of
15 each thereof to the said plaintiff, and that the said The Neptune Mining Company became and is now indebted to this plaintiff, for an- on account of the work and labor done and performed, the services rendered, the supplies furnished and the money advanced to and for and on account of the said The Neptune Mining Company as to each and every of the said items and as stated in the said three causes of action, and as and for the original consideration thereof, and that no part of any thereof has been paid; and that this plaintiff now prays judgment upon this fourth cause of action, in the sum and amount of Five Thousand Five Hundred thirty four and 9/100 dollars ($5,534.09).

Wherefore plaintiff prays the judgment of this Court against the said defendants and each of them, for the sum of Five Thousand Five Hundred thirty four dollars and nine cents ($5,534.09) with interest thereon as prayed for in the statements of the respective causes of action, and for costs.

SAMUEL K. TRACY,
JOHN R. SMITH,
Attorneys for Plaintiff.

(Endorsed:) In the Circuit Court of the United States for Northern District of Iowa. William Woodside, Plaintiff, *vs.* Albert Vasey *et al.*, Defendants. Complaint. Filed Jan. 29th, 1904. A. J. Van Duzee, Clerk, by J. O. Stewart, Deputy.

16 And on the 5th day of February 1904 there was filed in the office of the Clerk of said Court in this cause a Summons with Marshal's return of service endorsed thereon, which is in words and figures following, to-wit:

UNITED STATES OF AMERICA,
Northern District of Iowa, Cedar Rapids Division, ss:

To the Marshal of the District of Iowa:

In the Name of the President of the United States, you are hereby commanded to summon Albert Vasey, W. R. Lay Bourn, E. E. Stoehr, Henry Dirks, E. H. Holt, E. L. Pieper, Gerd Diekhoff, Harm Schulte, L. J. Rowel, John A. Meisner, and E. J. Christie, cicit-zens of the State of Iowa, to appear before the Honorable Circuit Court of the United States in and for the Northern District of Iowa on the first day of the next term thereof, to be begun and holden at the City of Cedar Rapids, on the first Tuesday of April next, it being the fifth day of April A. D. 1904, then and there to answer unto William Woodside, a citizen of the State of Colorado, in a plea of statute liability of the State of Colorado, in connection with the Neptune Mining Company for the sum of Five Thousand, Five Hundred and Thirty three and 9/100 dollars, to the damage of said plaintiff in the sum of $5,533.09.

Hereof fail not, and have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of Cedar Rapids, on this the 29th day of January A. D. 1904, and of the Independence of the United States the 128th.

[SEAL.]

A. J. VAN DUZEE,
Clerk U. S. C. C., Northern District of Iowa.
By J. O. STEWART,
Deputy.

17 (*Marshal's Return.*)

This writ came into my hands for service on the 30th day of January A. D. 1904, and I served the same on the within named L. J. Rowell at Tipton, Iowa, Feb. 1st; on E. E. Stoehr, and Henry Dirks at Holland Iowa; Feb. 3, on E. L. Pieper and Gerd Diekhoff at Fern Iowa, Feb. 3d., on Harm Schulte at Lincoln Center, Feb. 3d, on Albert Vasey and W. R. Laybourn, at Grundy Center Feb. — on John A. Meissner, at Reinbeck, Feb. 4, 1904, by reading the same to each of the above named defendants and by delivering a true copy to each at places and dates aforesaid.

EDWARD KNOTT,
U. S. Marshal.
M. L. HEALY, *Deputy.*

(Endorsed:) No. 168, Law. Summons. Circuit Court of the United States, Northern District of Iowa. William Woodside *vs.* Albert Vasey, W. R. Laybourn, E. E. Stoehr, Henry Dirks, E. H. Holt, E. L. Pieper, Gerd. Diekhoff, Harm Schulte, L. J. Rowel, John A. Meissner, E. J. Christie. Filed 5th day of February A. D. 1904. A. J. Van Duzee, Clerk, by J. O. Stewart, Deputy.

And on the 4th day of April 1904, there was filed in the office of the Clerk of said Court in this cause, a Motion for More Specific Statement and to strike,—which Motion is in words and figures following, to-wit:

18 In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRK, E. H. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHUELTE, L. J. ROWELL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Motion for More Specific Statement and to Strike.

I. Come now the defendants, Albert Vasey, W. R. Laybourn, E. E. Stoehr, Henry Dirk, E. L. Pieper, Gerd Diekhoff, Harm Schulte, L. J. Rowell, and John A. Meissner and move the court to require the plaintiff to make more specific the First Count of his petition in this;

First. Let him set forth a copy of the judgment and all of the papers and proceedings had and done in the District Court of Custer County Colorado, including the return of the service and process of said Court.

Second. Let him set forth an itemized statement of the accounts of the several persons named in Count One giving the several dates when the labor was performed and the kind of labor and material furnished, and the name of the officer or officers of the Neptune Mining Co., who requested the performance of said labor or the furnishing of said material; also to state whether the value of the labor and materials furnished, as attached to the said itemized accounts, is the reasonable value thereof, and whether the same was done, performed or furnished under a contract and if under a contract to set forth the terms thereof and whether in writing or oral and with what officer or officers of the Neptune Mining Co., such contract if any was made.

19 Third. Let the plaintiff state whether the assignment of the said judgment, as alleged in the First Count was in writing or verbal and if in writing to attach a copy thereof, and if verbal to set forth the terms and conditions thereof.

II. These defendants move the court to require the plaintiff to make more specific the Second Count of his petition in this;

First. Let him set forth a copy of the judgment and all of the papers and proceedings had and done in the District Court of Custer County Colorado, including the return of the service and process of said Court.

Second. Let him set forth an itemized statement of the accounts of the several persons named in Count Two giving the several dates when the labor was performed and the kind of labor and material

furnished, and the name of the officer or officers of the Neptune Mining Co., who requested the performance of said labor or the furnishing of said material; also to state whether the value of the labor and materials furnished, as attached to the said itemized accounts, is the reasonable value thereof and whether the same was done, performed or furnished under a contract and if under a contract to set forth the terms thereof and whether in writing or oral and with what officer or officers of the Neptune Mining Co., such contract if any was made.

Third. Let the plaintiff state whether the assignment of the said judgment, as alleged in the Second Count, was in writing or verbal, and if in writing to attach a copy thereof, and if verbal to set forth the terms and conditions thereof.

III. These defendants move the court to require the plaintiff to make more specific the Third Count of his petition in this:

Let him set forth an itemized statement of the accounts of the several persons named in Count Three giving the several dates when the labor was performed and the kind of labor and material
20 furnished, and the name of the officer or officers of the Neptune Mining Co., who requested the performance of said labor or the furnishing of said material; also to state whether the value of the labor and materials furnished, as attached to the said itemized accounts, is the reasonable value thereof and whether the same was done, performed or furnished under a contract and if under a con--ract to set forth the terms thereof and whether in writing or oral and with what officer or officers of the Neptune Mining Co., such contract, if any was made.

IV. Subject to the foregoing motion to make more specific, the defendants named move the court to strike out the Fourth Count of the plaintiff's petition as immaterial, irrelevant and redundant.

WILLIAMSON & WILLOUGHBY,
FRANCE & ROWELL, AND
JAMISON & SMYTH,
Attorneys for Defendants Named in Motion for More Specific Statement and to Strike.

(Endorsed:) Motion for more specific statement and to strike. Filed April 4, 1904. A. J. Van Duzee Clerk, by J. O. Stewart, Deputy.

21 And on the 16th day of April 1904 there was filed in the office of the Clerk of said Court in this cause an Amendment to Motion for more Specific Statement, which amendment is in words and figures follows:

In the Circuit Court of the United States, Northern District of Iowa, Cedar Rapids Division.

WM. WOODSIDE, Plaintiff,
vs.
ALBERT VASEY ET AL., Defendants.

Amendment to Defendants' Motion for More Specific Statement.

Comes now defendants by leave of court first had and amends the motion now on file for a more specific statement as follows:

"That plaintiff be required to divide his petition into separate counts so as to state each separate cause of action in a separate count.

WILLIAMSON & WILLOUGHBY AND
JAMISON & SMYTH, *Def'ts Att'ys.*

Filed April 16, 1904.
A. J. VAN DUZEE, *Clerk.*
By J. O. STEWART, *Deputy.*

22 And on the 16th day of April 1904 the following proceedings were had by said Court in this cause as appears of record on page 465 of Record No. 1 of said Court, to-wit:

No. 168.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY ET ALS., Defendants.

Now this 16th day of April A. D. 1904, this cause comes before the court upon the motion of the defendant for an order that plaintiff make his petition more specific in portions and strike portions of said petition, the defendants appearing by Messrs. Jamison & Smyth, their attorneys and plaintiff appearing by S. K. Tracy, Esq., and the arguments of counsel having been heard, the said motion is thereupon fully submitted to the Court and by the court taken under advisement, and thereupon after due consideration and the Court being now advised in the premises, sustained said motion, and the plaintiff has until the 1st day of July 1904 to amend his petition.

23 And on the 18th day of July 1904 there was filed in the office of the Clerk of said Court in this cause a 'Bill of Particulars as to Third cause of Action' which is in words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY ET ALS., Defendants.

Bill of Particulars as to Third Cause of Action.

Now comes the said plaintiff and files herewith and makes a part hereof, an itemized statement of the account of The Hendrie & Bolthoff Manufacturing and Supply Company, against The Neptune Mining Company, sued upon in the third cause of action as set forth in the amended complaint, the said statement of account being hereto attached and marked "Exhibit A," and the claim and demand therein stated being now the property of the plaintiff by assignment from the said The Hendrie & Bolthoff Manufacturing and Supply Company.

S. K. TRACY,
JOHN R. SMITH,
Attorneys for Plaintiff.

24 EXHIBIT "A."

Bought of The Hendrie & Bolthoff Mfg. & Supply Co.

August 25, 1902:

10 yds. Asbestos Paper 28# .07				1.96
6 Rolls Seldon Packing ¾" Rubber core:				
	22½ #			
	3 12 ½ #			
	35½ #			
	@ 28.40	25 %		21.08
501 #29 1" Pipe 16½			83.28	
22 pcs. 14' long 28#			a 40.60	
			123.88 55 %	55.75
Cutting and threading			2.75 10 %	2.48
205# 1½ Grooved Canton steel				
305# 1½				
89# 1½ Sqr. Tool Steel				
599#		.08		47.92

For Ingersoll Drill # 1:

6 dogs as per sample	1.25	7.50			
2 Ratchets	3.30	6.60			
6 Chuck Blocks	1.00	6.00			
12 Springs	.05	.60			
12 Rubber rings	.55	6.60			
1 Sow	....	3.25			
		30.55	20 %	24.44	$153.63

25	Forward				153.63
	Sept. 27, 1902:				
2	50′ Lgths. 1″ 4 ply W. W. Air hose 100 coupled.		40	40.00	
2	Sets couplings for same		4.00	8.00	
1	2″ Lunken Brass Pop Safety Valve		18.00 45 %	9.90	
					57.90
	Sept. 8:				
3	6″ C. L. Tees	4.00	12.00		
1	6 x 4 Red Ells		3.15		
			15.15 45 %	8.33	
3	6 x 5 Bushings	1.25	3.75		
3	5 x 4	.93	2.79		
3	4 x 3	.50	1.50		
2	6 x 4	1.25	2.50		
			10.54 50 %	5.27	
2	3 x 1½ Comb. Water Steam Gauges complete with trimmings	23.00	46.00 55 %	20.70	
1	¼ R. H. Pipe Tap	2.50			
1	1½	3.75			
1	½	1.87			
		8.12	60 %	3.25	37.55
	Sept. 10:				
1	Lgth. 5″ Pipe 20′ 2	1.45	29.24 55 %		13.16
	Sept. 15:				
2	#2 Banner Light Feed Oil Cups	5.00	10.00 45 %		5.50
					267.74

And interest as prayed in complaint.

(Endorsed:) Bill of Particulars as to third cause of action. Filed July 18, 1904. A. J. Van Duzee, Clerk, by J. O. Stewart, Deputy.

26 And on the 1st day of September 1904 there was filed in the office of the Clerk of said Court in this cause, an Answer by all defendants saving and excepting defendant E. J. Christie,—which answer is in words and figures following:

In the Circuit Court of the United States in and for the Northern District of Iowa, Cedar Rapids Division, Sept. Term, 1904.

WILLIAM WOODSIDE, Plaintiff,

vs.

ALBERT VASEY, W. R. LABORN, E. E. STOEHR, HENRY DIRKS, E. H. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHULTE, L. J. ROWELL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Answer.

Comes now all of the defendants above named except E. J. Christie and for answer to the complaint of the plaintiff states:

They admit that the plaintiff is a citizen and resident of the State of Colorado; that the amount in controversy exceeds $2,000; that

the Neptune Mining Company is a corporation organized and existing under the laws of the State of Colorado; that the same became a corporation on or about the first of December 1901; that these defendants were acting as directors of the Neptune Mining Company in 1903; that there was an act of the General Assembly of the State of Colorado in force from and after April 6th, A. D. 1901, and that the provisions of said act of the legislature of the State of Colorado, are substantially set forth in the complaint as alleged by plaintiff.

That a judgment was entered in favor of William Woodside and against the Neptune Mining Company in the District Court of Custer County, Colorado, as alleged in the first count; that a judgment was entered in favor of the West Cliff Hardware Company and against

The Neptune Mining Company in the District Court of Custer
27 County, Colorado, as alleged in the second count, and denies generally and specifically each and every other allegation of the plaintiff's complaint and each of the several counts of said complaint.

The defendants for further answer state; that on the 28th day of February 1902, and within sixty days after January 1, 1902, as provided by the act of the General Assembly of the State of Colorado in force from and after April 6th A. D. 1901, there was filed in the office of the Secretary of State of the State of Colorado an annual report for the year 1902 in the manner and form required by the act of the General Assembly of the State of Colorado, in force from and after April 6, A. D. 1901, and set out in the plaintiff's complaint; and that said report was duly verified by S. W. Stookey, President of the Neptune Mining Company and by P. W. Tourtellot Secretary as required by said act, and the fee of $5.00 for the filing of said report with the Secretary of State of Colorado paid, and in all respects said annual report fully complied with the act of the General Assembly of the State of Colorado in force from and after April 6, A. D. 1901 and the defendants make proffer of a certified copy of said report duly certified by the Secretary of State of the State of Colorado for the inspection of the plaintiff.

These defendants for further answer to the complaint of plaintiff and to each and every count thereof, state; that among the acts of the General Assembly of the State of Colorado in force from and after April 6, A. D., 1901, and at all times since, there now exists as a part of the statutes and laws of the State of Colorado, Section 2170 of the Revised Statutes of Colorado; that Sub-division 8 of said Section is as follows; "All actions and suits for any penalties or forfeitures of any penal statute brought by this State or by any persons to whom the penalty or forfeiture is given in whole or in part shall be commenced within one year next after the offense is committed and not after that time."

That under the provisions of this Section as construed by the court of appeals of the State of Colorado, and the Supreme
28 Court of the State of Colorado, this section applies to the penalty for a failure upon the part of the officers of a mining corporation to file an annual report and that the recovery against the officers and directors is strictly a penalty and is due upon the

contracting of the debt and that the statute of limitations as provided in said sub-division 8 of the said Section commenced to run from the date of the contracting of the debt.

Under the provisions of the act of the General Assembly of the State of Colorado in force from and after April 6, A. D. 1901, as set out in the complaint of the plaintiff, these defendants were not in default for the failure of said mining company to file the annual report for the year 1903 until the expiration of sixty days from and after January 1, 1903, and that all of the debts alleged to be due to the plaintiff from the said Neptune Mining Company were contracted prior to January 1, 1903, and none of said debts were contracted after February 15, 1903. Therefore these defendants were not in default for any failure upon the part of the said Neptune Mining Company to comply with the Statute as to the filing of an annual report at the time the debts alleged in the several counts of the plaintiff's complaint were contracted.

Further answering each and every count of said complaint the defendants state that this suit was commenced by the service of a summons upon these defendants February 1st, 3rd, and 4th 1904, and that under the provisions of the Statute of the State of Iowa, this suit was not commenced until the service of said summons and all of said debts alleged in the several counts of the plaintiff's complaint were contracted more than one year prior to the commencement of this suit.

Wherefore these defendants pray that said complaint be dismissed and the relief therein prayed for denied and that judgment be entered in favor of these defendants for costs in their behalf.

WILLIAMSON & WILLOUGHBY,
JAMISON & SMYTH,

29 *Attorneys for Defendants.*

(Endorsed:) No. 168, Law. William Woodside *vs.* Albert Vasey *et als.* Answer. Filed September 1, 1904. A. J. Van Duzee, Clerk, by J. O. Stewart, Deputy.

And on the 27th day of September 1904 there was filed in the office of the Clerk of said Court, in this cause, an Amended and Substituted answer, which is in words and figures following,

In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,

vs.

ALBERT VASEY, W. R. LABOURN, E. E. STOEHR, HENRY DIRKS, E. H. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHUELTE, L. J. ROWELL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Amended and Substituted Answer.

Comes now all of the defendants above named except E. H. Holt, and E. J. Christie and for answer to the complaint of the first count of the amended complaint, states;

They admit that the Neptune Mining Co., was a corporation organized under the Laws of the State of Colorado, on the 27th day of November A. D. 1901, and admit that the plaintiff William Woodside is a citizen of the State of Colorado, and that these defendants are residents and citizens of the State of Iowa and deny generally and specifically each and every other allegation contained in
30 said first count.

For answer to the second count of the plaintiff's complaint these defendants deny generally and specifically each and every allegation therein contained.

For answer to the third count these defendants deny generally and specifically each and every other allegation contained therein.

For answer to the 4th count or cause of action these defendants deny generally and specifically each and every other allegation contained therein.

For answer to the fifty count or cause of action these defendants deny generally and specifically, each and every other allegation contained therein.

For answer to the sixth count or cause of action these defendants deny generally and specifically each and every other allegation contained therein.

For answer to the seventh count or cause of action these defendants deny generally and specifically each and every other allegation contained therein.

For answer to the eighth count or cause of action these defendants deny generally and specifically each and every other allegation contained therein.

For answer to the ninth count or cause of action these defendants deny generally and specifically each and every other allegation contained therein.

For answer to the tenth count or cause of action these defendants deny generally and specifically each and every other allegation contained therein.

For answer to the eleventh count or cause of action these defendants deny generally and specifically each and every other allegation contained therein.

For answer to the twelfth count or cause of action these defendants deny generally and specifically each and every other allegation contained therein.

31 For answer to the thirteenth count or cause of action these defendants deny generally and specifically each and every other allegation contained therein.

For answer to the fourteenth count or cause of action these defendants deny generally and specifically each and every other allegation contained therein.

These defendants for further answer to the first and second count or cause of action in a separate and distinct division of this their answer state;

That the pretended judgment set forth in the first and second counts of cause of action purporting to have been entered against the Neptune Mining Co., in Colorado, was obtained by fraud, of the

plaintiffs in said judgment and that said court was without jurisdiction to enter any such judgment, in that the service of the notice of suit upon Orlando Lough as a stockholder and the return thereof that the said Orlando Lough was a stockholder of the Neptune Mining Co., is false and fraudulent and known to be so by the plaintiffs in said judgment at the time; that the facts in relation to the said Orlando Lough being a stockholder are as follows:

About April 1903 Orlando Lough purchased of one E. J. Christie two hundred (200) shares of stock in the Neptune Mining Co., and the said Christie at the time representing that said stock was treasury stock of the said The Neptune Mining Co., and the funds received therefor would be used in the development of the Neptune Mining Co., that said Lough shortly after April learned that said 200 shares so sold to him was not treasury stock but was stock held in the name of E. J. Christie; that thereupon about July 1, 1903, said Lough returned said stock to the said E. J. Christie and transferred it to the said E. J. Christie by endorsement in blank on the back of the said shares of stock and received in lieu thereof from the said Christie, 200 shares of the stock of the new Bull Domingo Mining Co.

That about the first of July 1903, after said exchange of said stock, at the instance and request of E. J. Christie, said Lough went to Colorado to look at the mine, the said E. J. Christie paying the expenses of the said Lough; that while the said Lough was
32 at the mine, one Zmundt informed the said Lough that certain notices were to be served upon him; that said Lough informed Zmundt that he had no stock in the Neptune Mining Co., and that the plaintiff's attorneys in said suit were so informed of this fact to which they replied that they did not care seeing that his name appeared upon the books of the company they would serve it anyway; that when the Sheriff served the notice upon the said Lough, said Lough informed him that he owned no stock in the company; that after the service of said notice and the delivery of the copies to the said Lough, the said Lough then handed the said notice to Zmundt who informed the said Lough that the service was no good and the said Zmundt notified Lough that he would take care of it and see that no judgment was obtained and that the said Lough had no knowledge that any judgment was obtained.

That said Zmundt and E. J. Christie acting in concert and collusion with the plaintiffs in said suits entered into an arrangement or agreement for the purpose of clandestinely, secretly and fraudulently enabling the plaintiffs to obtain judgment in the suits aforesaid, and to thereby adjudicate the amount and validity of the indebtedness between the said plaintiffs and the said Neptune Mining Co., and for the purpose of preventing these defendants from calling in question or controversy the amount and validity of said indebtedness of the Neptune Mining Co., that in truth and in fact the said Lough was not a stockholder in the said Neptune Mining Co., at the time of the service of said notice in said suits but that said stock was then in the possession of the said E. J. Christie, and that the said E. J. Christie and Zmundt and the plaintiffs, well knew

said fact and that said judgments were thereby obtained by fraud and collusion of the said Christie and Zmundt and the plaintiffs and because of said fraud, said judgments are null and void, and not conclusive upon the amount or validity of the indebtedness of the Neptune Mining Co., or of these defendants and that as a matter of fact the said Neptune Mining Co., was not indebted to said
33 plaintiffs upon the several claims upon which judgment was entered at the time it was so entered.

These defendants for a further answer and defense to each and every count or cause of action alleged in the complaint and in a separate and distinct division of its answer, state:

That on or about the 27th day of November 1901, one E. J. Christie, caused to be incorporated the Neptune Mining Co., and that the said E. J. Christie was the prime mover in incorporating said Company, in electing the officers and in controlling and managing the said company, and that said corporation purported to be a corporation of the State of Colorado, with its principal place of business in the State of Colorado; that the said Christie named the president and directors and secretary; that he named as the first president of said corporation S. W. Stookey of Cedar Rapids, Iowa, and as the first secretary, P. W. Tourtellot of Cedar Rapids, Iowa, and the first Board of Directors, S. W. Stookey, P. W. Tourtellot, and C. W. Holbrook, that on or about September 1st 1902, S. W. Stookey resigned as president and C. W. Holbrook was named by the said Christie as president and that on or about said date P. W. Tourtellot resigned as Secretary and said E. J. Christie named himself as Secretary and Treasurer, and also as business manager.

That the Articles of Incorporation and By-Laws provided that the annual meeting of the stockholders would be held on or about the 27th of November 1902, but that no annual meeting was held in the State of Colorado and no officer and directors were elected at any annual meeting of the stockholders in pursuance of the Articles of Incorporation, and under the provisions of the Statutes of the State of Colorado governing corporations; that the only connection these defendants had with said corporation was as stockholders and that the said E. J. Christie had a pretended meeting of the stockholders of the said corporation held in the State of Iowa on or about November 13th, 1902, pretended to elect these defendants as
34 directors of said corporation, but as a matter of fact these defendants had no knowledge of the business of said corporation, and had none of the management of or control of said corporation; that these defendants were then and ever since have been citizens and residents of the State of Iowa, and that their names were used in connection with said corporation if at all by the said E. J. Christie, under the circumstances above named and without their ever having in fact been legally and properly elected in pursuance of the provisions of the articles of incorporation and the statutes of the State of Colorado.

That after the pretended meeting of the stockholders and the pretended election by the said E. J. Christie of these defendants as directors of said corporation, the said E. J. Christie represented to

the several employees of said corporation and to the several persons named in the complaint, and several causes of action of the plaintiff, that if they would extend credit to said corporation that if said corporation did not pay the said indebtedness and pay for the said labor which might be performed for said corporation, that as the Secretary and manager and controller of said corporation, he would fail to file the annual report required by the Statutes of the State of Colorado, and that thereby the said several persons would be enabled to pursue the persons that he had named as directors; that it was the duty of the said Secretary of the said corporation to have prepared and filed an annual report for said corporation and that the said Christie acting in collusion with the several persons who were then employees of said corporation and to the several persons who had extended credit and were expected to extend credit dealing with said corporation, that he would fail to file the annual report. These defendants therefor- aver that because of the said facts, and circumstances aforesaid, they did not incur any of the penalties averred in the complaint on account of the alleged failure to file said annual report.

These defendants for further separate and distinct defense and in a separate and distinct division of this their answer, state;

That none of the several debts alleged to have been contracted by said Neptune Mining Co., in the several causes of action or counts alleged by the plaintiff were ever contracted with the knowledge or consent or by the aid or authority or assistance of these defendants as the pretended directors of the Neptune Mining Co., nor were any of said alleged debts or liabilities contracted by the Neptune Mining Co.; that the only authority to contract debts as provided by the Articles of Incorporation and by-laws of the Neptune Mining Co., in excess of the sum of $500 by any agent, clerk, manager, or superintendent of said corporation required a resolution of the Board of Directors of said Neptune Mining Co., and these defendants deny that the said Neptune Mining Co., by or through its Board of Directors, ever authorized by resolution or otherwise the contracting of any of the alleged debts or liabilities in the plaintiff's complaint and deny that any person had any authority to represent the Neptune Mining Co., in contracting any of the debts alleged in the plaintiff's complaint, and deny that the Neptune Mining Co., or any person having any authority to bind it or represent it, contracted any of the debts alleged in the plaintiff's complaint.

These defendants for further answer to the several causes of action or counts alleged in the plaintiff's complaint and in a separate and distinct division thereof, state;

That the Neptune Mining Co., ceased to operate a mine in the State of Colorado and ceased to do business in the State of Colorado on or about the first day of February, 1903; that on or about said date the said Neptune Mining Co., abandoned its said mining operations and abandoned its business and from and after said time ceased to do business or to engage in business in the State of Colorado and that because of said facts no report was required to be filed by the said Neptune Mining Co., as alleged by the plaintiff in its said complaint.

These defendants for further answer in a separate and distinct division thereof state: that the plaintiff is not entitled to maintain this action in the State of Iowa in that the defendants at the time of the alleged violation of the alleged statute of the State of Colorado as stated in the plaintiff's complaint were citizens and residents of the State of Iowa, and have never been citizens or residents
36 of the *the* State of Colorado: that the plaintiff's claim as alleged in his complaint is to recover a statutory penalty and that under the laws of the State of Iowa the said Statute penalties cannot be recovered and the plaintiff cannot enforce the alleged penal statute of the State of Colorado outside of the boundaries of said State.

These defendants for further answer in a separate and distinct division thereof, state:

That among the statutes of the State of Colorado, in force on April 6, 1901, and at all times since is Section 2170 of the Revised Statutes of Colorado, and Sections 2907, 2908 of Mills Code of the State of Colorado. Section 2907 of said code is as follows:

"All actions and suits for any penalty or forfeiture of any penal statute brought by this state or by any person to whom the penalty or forfeiture is given in whole or in part shall be commenced within one year next after the offense is committed and not after that time."

Section 2908 is as follows:

"The preceeding section shall not apply to any suit which is or shall be limited by any statute to be brought within a shorter time than is prescribed therein, but such suit shall be brought within the time that may be limited by such statute."

That the provisions of the statute of the State of Colorado imposing a liability upon the officers and directors of a corporation for a failure to file an annual report is a penal statute and that under the provisions of the said Act of April 1901 alleged in the plaintiff's complaint, the penalty is incurred upon the contracting of the debt by the corporation and that the statute of limitations begins to run from the date of the contracting of the debt, therefore all of the alleged claims in the several causes of action or counts of the plaintiff's complaint are barred by the Statute of Limitations aforesaid, and by the statute of limitations of the State of Colorado.

37 For further answer and defense these defendants state that *that* said corporation, Neptune Mining Co., was not in default, nor were these defendants in default for any failure upon the part of the Neptune Mining Company to comply with the Statutes as to the filing of an annual report for the year 1903.

Wherefore these defendants ask that the plaintiff's complaint be dismissed with costs in their behalf.

WILLIAMSON & WILLOUGHBY,
JAMISON & SMYTH,
Attorneys for Defendants.

(Endorsed:) William Woodside *vs.* Albert Vasey *et al.* Amended and Substituted Answer. Filed Sept. 27, 1904. A. J. Van Duzee, Clerk, by J. O. Stewart, Deputy.

And on the 3rd day of October 1904 there was filed in the office of the Clerk of said Court in said cause a Reply, which is in words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODHOUSE, Plaintiff.

vs.

ALBERT VASEY ET ALS., Defendants.

Reply.

For reply to the amended and substituted answer, plaintiff denies each and every allegation thereof.

JOHN R. SMITH,
S. K. TRACY,
Pl'ffs Att'ys.

Filed Oct. 3, 1904.
A. J. VAN DUZEE, *Clerk.*
By J. O. STEWART, *Deputy.*

38 And on the 17th day of October 1904 there was filed in the office of the Clerk of said Court in this cause a Summons, served upon E. J. Christie, which summons is in words and figures following:

UNITED STATES OF AMERICA.
Northern District of Iowa, Cedar Rapids Division, ss:

To the Marshal of the Northern District of Iowa:

In the Name of the President of the United States, you are hereby commanded to summon E. J. Christie, a citizen of the State of Iowa, to appear before the Honorable Circuit Court of the United States in and for the Northern District of Iowa on the first day of the next term thereof, to be begun and holden at the City of Cedar Rapids, on the 2nd Tuesday of September next it being the 13th day of September A. D. 1904, and continued until the 18th day of October 1904, then and there to answer unto William Woodside, a citizen of the State of Colorado, in a plea of Action for debt, to the damage of the said plaintiff in the sum of Five Thousand Five Hundred and Thirty three and 09/100 dollars ($5,533.09).

Hereof fail not, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States at the City of Cedar Rapids, this the 3d day of October A. D. 1904 and of the Independence of the United States the 128th.

[SEAL.]

A. J. VAN DUZEE,
Clerk U. S. C. C., Northern District of Iowa.
J. O. STEWART, *Deputy.*

(*Marshal's Return.*)

This writ came into my hands for service on the 10th day of October 1904, and I served the same on the within named E. J. Christie also see acceptance of service on back of this summons: on the 11th day of October 1904, by reading the same to him, and by delivering a true copy to him at Grundy Center in the county of Grundy, and State of Iowa.

EDWARD KNOTT,
U. S. Marshal.
M. L. HEALY, *Deputy.*

39 I accept due and legal service of the within summons.

E. J. CHRISTIE.

Oct. 11, 1904.

(Endorsed:) No. 168, Law. Alias Summons. Circuit Court of the United States, Northern District of Iowa. William Woodside *vs.* E. J. Christie. Filed this 19th day of October, 1904. A. J. Van Duzee, Clerk, J. O. Stewart, Deputy.

40 And on the 9th day of July 1905 there was filed in the office of the Clerk of said Court in this cause, an Amended Complaint, which is in words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff.

vs.

ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRKS, E. E. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHUELTE, L. J. ROWEL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Amended Complaint.

Now comes said plaintiff, and by leave of court files this amended complaint and complains of the defendants and alleges

That plaintiff is a resident and citizen of the State of Colorado, and that the above named defendants, and each of them, are residents and citizens of the State of Iowa, and residents of said District and Division.

That the amount and value in controversy in this action exceeds the sum of Two Thousand dollars ($2,000) exclusive of costs.

That the Neptune Mining Company is a mining corporation organized and existing under the laws of the State of Colorado, and was, at all the times hereinafter mentioned, authorized to do business in the State of Colorado and subject to the laws thereof; that said

corporation was organized and became a corporation of and
41 in the State of Colorado, on the 27th day of November A. D. 1901, having a stated capital stock of One Million Dollars, in one million shares of one dollar each.

That the defendants above named, and each of them, were, during the sixty days next after the first day of January A. D. 1903, the duly chosen, qualified and acting Directors of the said corporation, The Neptune Mining Company, and members of the Board of Directors of said corporation, and were and continued to be such Directors from and including the first day of January A. D. 1903, and thereafter for a period of more than sixty days and continued to be such Directors until the commencement of this action.

That by an Act of the General Assembly of the State of Colorado, approved and in force from and after April 6th, A. D. 1901, and in force at all times since said date, and still in force and which Act was entitled "An Act relating to corporations, and prescribing certain fees to be paid by corporations, foreign and domestic, and to repeal certain acts and all acts and parts of acts in conflict herewith," it was provided as follows;

"SEC. 11. Every corporation, joint stock company or association incorporated by or under any general or special law of this state, or by any general or special law of any foreign state or kingdom, or of any state or territory of the United States beyond the limits of this state, shall, within sixty days next after the first day of January in each year, commencing with the year 1902, make and file an annual report in the office of the Secretary of state, showing;

First. The names of its officers and their several places of residence, together with the street or business address of such officer.

Second. The names of its directors or trustees and their several places of residence, together with the street or business address of such director or trustee.

Third. The amount of its capital stock as fixed and deter-
42 mined by its articles of incorporation and amendments thereto.

Fourth. The proportion of said capital stock actually paid in.

Fifth. Setting forth how the same was paid, whether in cash, by the purchase of property or otherwise.

Sixth. The amount of the indebtedness of said corporation at the date of filing said report.

Seventh. Setting forth whether or not it is engaged in the active operation of its business within the State of Colorado.

Eighth. Such other information as will show with reasonable fullness and certainty the condition of its real and personal property and the financial condition of such corporation, joint stock company or association, at the date of filing such report.

And if such corporation be a mining corporation, engaged in mining or mining and milling the precious metals, in addition to the requirements above set forth, such mining corporation shall also set forth;

First. The amount of its properties within this state, and where the same are located.

Second. Whether or not the same are held under letters patent of the United States, and if so, what amount thereof.

Third. Whether or not the same are held by possessory right on the public domain, setting forth the amount thereof.

Fourth. Also stating in general terms the amount of work done thereon and improvements made thereon since the time of filing the last annual report.

* * * * * * *

Which report in each case shall be signed by the president, and be verified by the oath of the president and secretary of said company, under its corporate seal.

Every such corporation, joint stock company or association shall pay to the Secretary of State, for the state, as a fee for examining, and filing such reports, as follows:

43 All ditch or canal companies having a capital stock of fifty thousand dollars or less, one dollar;

All corporations not for pecuniary profit, or corporations organized for religious or educational or benevolent purposes, one dollar;

All corporations with a capital stock of ten thousand dollars or less, one dollar.

All other corporations, joint stock companies or associations, five dollars.

And if any such corporation, joint stock company or association shall fail, refuse or omit to file the annual report aforesaid, and to pay the fee prescribed therefor, within the time above prescribed, all the officers and directors of said corporation shall be jointly and severally and individually liable for all debts of such corporation, joint stock company or association that shall be contracted during the year next preceding the time when such report should, by this section, have been made and filed, and until such report shall be made and filed."

That by virtue of such Act, it became and was the duty of said corporation, and the officers thereof, to file said annual report within sixty days next after the first day of January A. D. 1903.

That said corporation did not file, or cause to be filed, and did fail and omit to file, the said annual report in the office of the Secretary of State for the State of Colorado, and wholly failed and omitted to file, or cause to be filed, the said annual report, either within the said period or at any other time prior to the commencement of this action.

That during the year next preceding the time when such annual report should have been filed, and during the period when the said corporation and said defendants, and each of them, were in default as to the filing of said report, the said corporation was carrying on the business of mining in said State of Colorado, and con-

44 tracted debts of said corporation, as hereinafter set forth.

That during the period aforesaid, and at divers times between the first day of August 1902, and the first day of March 1903, the said corporation incurred and contracted debts to and in favor of the following named persons, firms and corporations, each and all of whom were at all the times herein mentioned, and still are, residents and citizens of the State of Colorado, for work and labor done and

performed, and for services rendered, and for moneys advanced and paid out, in the sums and amounts as herein stated;

Ulley Camper, for labor and supplies, in the sum of.....	$92.00
Ben. W. Gilmore, for work and labor, in the sum of.....	783.30
S. H. Pope, for labor, in the sum of.....	286.57
Roy Lacksley, for labor and supplies, in the sum of.....	362.50
Jerry Starr, for work and labor, in the sum of.....	120.75
The Vulcan Sheet Metal Co., a corporation organized under the laws of Colorado, and a citizen of said State, for goods, wares & mdse., in the sum of.....	360.63
John R. Smith, for services rendered, in the sum of.....	172.50
Ernest Gilmler, for work and labor, in the sum of.....	407.85
H. E. Fossette, for labor, in the sum of.....	12.00

That each and every of said debts and claims remain-d and still remain, wholly unpaid, and that on divers days in the month of June A. D. 1903, each and every of said creditors sold, assigned and transferred his said claim and demand, for value received and in good faith, to the plaintiff herein, William Woodside.

That this plaintiff brought an action against the said The Neptune Mining Company, in the District Court of the State of Colorado, in and for the County of Custer in said State said Court being a Court of Record of said State, of general jurisdiction, for the recovery of a judgment upon said demands, and all thereof, against said The Neptune Mining Company, that said Court had obtained, by due regular and sufficient service of process of said Court on said The Neptune Mining Company, full jurisdiction in said cause and over said The Neptune Mining Company, and that thereupon and in due course, the said cause came on regularly for hearing
45 in said Court, and that this plaintiff, on the 3d day of October 1903, recovered a judgment of and in the said Court in said cause, and against the Neptune Mining Company, for the sum of Twenty seven Hundred and Twenty four dollars and forty six cents ($2724.46), and costs to be taxed, based upon and for the recovery of the said demands, which said judgment was duly entered and recorded in said Court and there remains of record, and that said judgment is still in force and wholly unsatisfied and the property of said plaintiff.

That by an Act of the General Assembly of the State of Colorado approved April 19th, 1889, and in force at all times since said date, and which act was entitled "An act to amend an act entitled 'An Act to provide a code of procedure in civil actions for courts of record in the State of Colorado, and to repeal all acts inconsistent therewith,' approved April 7, 1887," it was provided as follows:

"Sec 8. Section one hundred and sixty eight of said act is hereby amended to read as follows: Sec. 168: Judgment may be had if the defendant fails to answer the complaint, as follows:

First. In an action arising upon contract for the recovery of money or liquidated damages only, if no answer, demurrer or motion has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted,

the clerk, upon application of the plaintiff, shall enter the default of the defendant, and immediately thereafter, if the complaint shall have been or shall then be properly verified, enter judgment for the amount specified in the summons, including the costs against the defendant or defendants, who are so in default."

And the plaintiff further alleges that the record of the judgment against the said The Neptune Mining Company in favor of the said William Woodside, as plaintiff, in the said District Court of Custer County, Colorado, is in the words and figures following, to-wit:

46 "STATE OF COLORADO, *County of Custer, ss:*

In the District Court of Custer County.

WILLIAM WOODSIDE, Plaintiff,
vs.
THE NEPTUNE MINING COMPANY, Defendant.

Default.

On this 3rd day of October A. D. 1903, upon application of John R. Smith, Esq., attorney of record for the plaintiff, for a default to be entered against The Neptune Mining Company, a corporation, the defendant herein, and it appearing from the summons issued and duly returned and filed herein, that service was duly had thereof, on The Neptune Mining Company, a corporation, defendant aforesaid, personally on Orlando Lough, a stockholder of said defendant company, no President or other Chief Officer, Secretary, Treasurer, Cashier or other General Agent of said defendant company being found in said County of Custer, and State of Colorado, together with a copy of the complaint filed herein, and no answer, demurrer or other motion having been filed herein to said complaint, and the time having expired for filing any answer, demurrer or other motion, and no further time having been granted by the Court, The Neptune Mining Company, the defendant comes not, neither does it- attorney nor any person for it in this matter, it is considered and ordered that the said defendant, The Neptune Mining Company, be and hereby is in default, and that said default be and hereby is entered against said defendant The Neptune Mining Company, for the want of an answer, demurrer or other motion to plaintiff's- complaint.

(Signed) JOHN H. LEARY, *Clerk.*"

47 "STATE OF COLORADO, *County of Custer, ss:*

In the District Court of Custer County.

WILLIAM WOODSIDE, Plaintiff,
vs.
THE NEPTUNE MINING COMPANY, Defendant.

Judgment by Default by Clerk.

In this action, the defendant, The Neptune Mining Company, a corporation, having been regularly served with process, and having failed to appear and answer the plaintiff's verified complaint filed herein, the legal time for answering having expired, and no answer demurrer or other motion having been filed, the default of the said defendant, The Neptune Mining Company, in the premises having been duly entered according to law; upon application of said plaintiff to the Clerk, judgment is hereby entered against said defendant in pursuance of the prayer of said complaint.

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is ordered, adjudged and decreed that the said plaintiff William Woodside, do have and recover of and from the said defendant, The Neptune Mining Company, the sum of Twenty seven hundred, Twenty four 46 100 ($2724.46) dollars as principal, and the further sum of One Hundred Fifty two 67 100 ($152.67) dollars interest, with interest on said amounts at the rate of eight per cent per annum from the date hereof till paid, together with said plaintiff's costs and disbursements accrued and to accrue; whereof let execution issue; and it is further ordered, adjudged and decreed, that the attachment not having been traversed, be and hereby is sustained in this matter.

Judgment rendered October 3rd A. D. 1903.

(Signed) JOHN H. LEARY, *Clerk.*"

48 That the said defendants in this action, as members of the Board of Directors of said The Neptune Mining Company, by reason of the premises and the failure and omissions of said corporation to file its annual report, as required by the laws of Colorado, became and were, and still are, jointly and severally and individually liable for the said debts, judgments and demands.

That interest accrued under the laws of Colorado upon said claims as against said defendants as to the sum of $1,943.98 of the said aggregate, at the rate of eight per cent. per annum from and after February 5th, 1903; and upon the sum of $360.63 thereof from October 17th, 1902, at the same rate of interest.

And the plaintiff, stating the foregoing as a first cause of action, against the said defendants, prays for judgment against the said defendants, and each of them, upon said first cause of action for the sum of $2724.46 with interest thereon from the 3rd day of October A. D. 1903, at the rate of eight per cent. per annum.

For a second cause of action, against the said defendants plaintiff

alleges that, as alleged in the statement of the first cause of action, and to which reference is hereby made The Neptune Mining Company is a mining Corporation organized under the laws of Colorado and was such corporation at all the times therein stated, and that the defendants were Directors thereof at the times stated and for and after the said first day of January 1903, for a period of more than sixty days and until the commencement of this action, and that under the laws of Colorado, as stated at length in said first cause of action, and to which reference is made, it was the duty of said corporation and its officers to file an annual report within sixty days next after the first day of January 1903, and that the said corporation and its officers did not file said annual report, or any annual report, within said period, or at any time prior to the commencement of this action.

49 Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants, and each of them, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in the said State of Colorado, and contracted debts of said corporation as hereinafter set forth; that during the periods aforesaid, and at divers times, between the 1st day of August 1902, and the 1st day of March 1903, the said corporation incurred and contracted debts to and in favor of the following named persons and corporation, each and all of whom were, at all times herein mentioned, and still are, residents and citizens of the State of Colorado, for work and labor done and performed, and for services rendered, and for money advanced and paid out, in the sums and amounts as herein stated, to-wit:

To H. F. Knuth and August Rasch, partners as The Westcliffe Hardware Co., for goods, wares and supplies, in the sum of	$259.97
To John Shortridge, for work and labor, in the sum of	162.75
To H. D. Mills, for work and labor, in the sum of	51.00
To John Blair, for work and labor, in the sum of	25.00
To A. N. Parnell, doing business under the name of The Florence Iron Works, for work and labor, in the sum of	21.96
To the Stearns-Rogers Manufacturing Company, a corporation organized and existing under the laws of Colorado, for goods, wares and merchandise, in the sum of	73.92
To Mrs. F. F. Peery, for boarding men, in the sum of	108.50
To Thos. McConnell, for work & labor, in the sum of	70.00
To William Davis, for work and labor, in the sum of	52.00

That each and every of said debts and claims remained, and still remain, wholly unpaid; and that on divers days in the months of June and July 1903, each and every of the said creditors, except The Westcliffe Hardware Company, sold, assigned and transferred his said claim, for value received and in good faith, to the said firm of H. F. Knuth, and August Rasch, who were then partners doing

business under the name and style of The Westcliffe Hardware Company; that thereupon, and on the 13th day of July 1903,
50 the said The Westcliffe Hardware Company brought an action against the said The Neptune Mining Company, in the District Court of the State of Colorado, in and for the County of Custer, in said State, the said Court being a Court of Record, of the said State of general original jurisdiction for the recovery of a judgment upon the said demands, and all thereof, against the said The Neptune Mining Company; that said Court had and obtained, by due, regular and sufficient service of process of said Court on the said The Neptune Mining Company, full jurisdiction in said cause and over said The Neptune Mining Company; and that thereupon, and in due course, the said cause came on regularly for hearing in said Court, and that the said The Westcliffe Hardware Company, on the 3rd day of October A. D. 1903, recovered a judgment of and in the said Court in the said cause, and against The Neptune Mining Company, for the sum of Eight Hundred and sixty two dollars and thirty six cents ($862.36) and costs to be taxed, based upon and for the recovery of the said demands, which said judgment was duly entered and recorded in said Court and there remained of record, and that said judgment is still in force and wholly unsatisfied.

That by an Act of the General Assembly of the State of Colorado approved April 19th, 1889, and in force at all times since said date, and which act was entitled "An Act to amend an act entitled 'An act to provide a code of procedure in civil actions for courts of record in the State of Colorado, and to repeal all acts inconsistent therewith,' Approved April 7, 1887," it was provided as follows:

"SEC. 8. Section one hundred and sixty eight of said act is hereby amended to read as follows: SEC. 168. Judgment may be had if the defendant fails to answer the complaint, as follows;

First. In an action arising upon contract for the recovery of money or liquidated damages only, if no answer, demurrer or motion has been filed with the clerk of the court within the time specified in the summons, or such further time, as may have been
51 granted, the Clerk, upon the application of the plaintiff, shall enter the default of the defendant, and immediately thereafter, if the complaint shall have been or shall then be properly verified, enter judgment for the amount specified in the summons, including the costs against the defendant or defendants, who are so in default."

And plaintiff further alleges that the record of the judgment against the said The Neptune Mining Company in favor of the said The Westcliffe Hardware Company, as defendant, in the said District Court of Custer County, Colorado, is in the words and figures following, to-wit;

"STATE OF COLORADO,
County of Custer, ss:

In the District Court of Custer County.

HELMUTH KNUTH and AUGUST RASCH, Partners, Doing Business under the Name and Style of The Westcliffe Hardware Company, Plaintiff,

vs.

THE NEPTUNE MINING COMPANY, Defendant.

Default.

On this 3rd day of October A. D. 1903, upon application of J. G. Schweigert, Esq., attorney of record for the plaintiff for a default to be entered against The Neptune Mining Company, a corporation, the defendant herein, and it appearing from the summons issued and duly returned and filed herein, that service was duly had thereof on The Neptune Mining Company, a corporation, defendant aforesaid, personally on Orlando Dough, a stockholder of said defendant company, no President or other Chief Officer, Secretary, Treasurer, Cashier or other General Agent of said defendant company being found in said County of Custer and State of Colorado, together with a copy of the complaint filed herein, and no answer, demurrer or other motion having been filed herein to said complaint, and the time having expired for filing any answer, demurrer, or other
52 motion, and no further time having been granted by the Court, and The Neptune Mining Company, the defendant comes not, nor does its attorney, nor any person for it in this matter, it is considered and ordered that the said defendant The Neptune Mining Company, be and hereby is in default, and that said default be and hereby is entered against said defendant, The Neptune Mining Company for the want of an answer, demurrer or other motion to plaintiff's complaint.

(Signed) JOHN H. LEARY, *Clerk.*"

"STATE OF COLORADO,
County of Custer, ss:

In the District Court of Custer County.

HELMITH KNUTH and AUGUST RASCH, Partners, Doing Business under the Name and Style of The Westcliffe Hardware Company, Plaintiffs,

vs.

THE NEPTUNE MINING COMPANY, Defendant.

Judgment by Default by Clerk.

In this action the defendant, The Neptune Mining Company, a corporation, having been regularly served with process, and having

failed to appear and answer the plaintiff's verified complaint filed herein, the legal time for answering having expired, and no answer, demurrer or other motion having been filed, the default of the said defendant, The Neptune Mining Company, in the premises having been duly entered according to law; upon application of said plaintiffs to the Clerk, judgment is hereby entered against said defendant in pursuance of the prayer of said complaint.

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is ordered, adjudged and decreed that the said plaintiff, The Westcliffe Hardware Company, do have and recover of and from the said defendant, The Neptune Mining Company, the sum of Eight Hundred Twenty three dollars and ninety one cents ($823.91) principal, and the further sum of Thirty eight and 45 100
53 dollars ($38.45) interest, with interest on said amounts at the rate of eight per cent. per annum from the date hereof, till paid, together with said plaintiff's costs and disbursements accrued and to accrue whereof let execution issue; and it is further ordered, adjudged and decreed, that the attachment, not having been traversed, be and hereby is sustained in this matter.

Judgment rendered October 3rd. A. D. 1903.

(Signed) JOHN H. LEARY, *Clerk.*"

That afterwards, and on the 25th day of November A. D. 1903, the said plaintiff in this action, The Westcliffe Hardware Company, by its formal assignment of judgment in writing, sold, assigned and transferred its said judgment to this plaintiff, William Woodside, for value received and in good faith, and that the said plaintiff, William Woodside, is now the owner thereof; that the said defendants in this action as members of the Board of Directors of the said The Neptune Mining Company, by reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation to file its annual report as required by the laws of Colorado, became and were and still are jointly and severally and individually liable for the said debts, judgment and demand; that under the laws of Colorado the said judgment is entitled to draw interest after date at the rate of eight per cent. (8%) per annum.

Wherefore Plaintiff prays for judgment on this second cause of action, for the sum of Eight Hundred and Sixty Two Dollars and Thirty six cents ($862.36) and interest from October 3rd 1903, at the rate of eight per cent. (8%) per annum.

For a third cause of action, against said defendants, plaintiff alleges that, as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all
54 the times herein mentioned, and that the defendants were directors thereof at all the times herein mentioned and for and after the said first day of January A. D. 1903 for a period of more than sixty days immediately following the said date and until the commencement of this action, and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of the said corporation

and said officers to file an annual report within sixty days next after the 1st day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any annual report, within said period, or at any time prior to the commencement of this action, and that by reason of the failure, refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers, and directors of the said corporation, and each of the defendants, as a director of the said corporation, became and were, and still are, jointly and severally and individually liable for all the debts of such corporation that were contracted during the year next preceding the time when such report should have been filed, to-wit, within sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants, and each of them, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in the said State of Colorado and contracted a debt to and in favor of The Hendrie & Bolthoff Manufacturing and Supply Company, a corporation organized under the laws of Colorado, and a resident and citizen of said State of Colorado, for goods, wares and merchandise sold and delivered to said The Neptune Mining Company, and which were of the value and to the amount of Two Hundred and sixty seven
55 and 74 100 dollars ($267.74). The said goods, wares and merchandise were so sold and delivered to said The Neptune Mining Company, between the 25th day of August 1902 and the 27th day of September 1902.

That nothing was at any time paid by said The Neptune Mining Company, or by any one for it, for said goods, wares and merchandise, or upon said account, except that certain of the material, to the amount of One and 20 100 dollars ($1.20) was returned and credited.

That the Neptune Mining Company, on September 27th, 1902, was indebted to said, The Hendrie and Bolthoff Manufacturing and Supply Company, in the amount of Two Hundred and Sixty six and 54/100 dollars ($266.54) and that said sum, under the laws of Colorado, drew interest from said date at the rate of eight per cent. (8%) per annum until paid.

That afterwards, and on the 13th day of January 1904, the said The Hendrie & Bolthoff Manufacturing and Supply Company sold, assigned and transferred, by its written assignment of said date, all of its claim and demand against the said The Neptune Mining Company, to William Woodside, the plaintiff herein, for value received and in good faith, and this plaintiff is now the owner thereof; and that the said The Neptune Mining Company, and each of the said defendants, as the Directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that especially the said defendants in this action, as members of the Board of Directors of the said The Neptune Mining Company, by reason of the

premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly, severally and individually liable for the said debt.

Wherefore plaintiff prays for judgment against the said defendants, and each of them, on this third cause of action, for the sum of Two Hundred and Sixty six and 54 100 dollars ($266.54) and interest from September 27th, 1902 at the rate of eight per cent. (8%) per annum.

56 For a fourth cause of action against the said defendants, plaintiff alleges that, as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all the times herein mentioned, and that the defendants were directors thereof at all the times herein mentioned and for and after the said first day of January A. D. 1903 for a period of more than sixty days immediately following the said date and until the commencement of this action, and that under the laws of Colorado, as stated at length in said first cause of action, and to which reference is made, it was the duty of the said corporation and said officers to file an annual report within sixty days next after the 1st day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any annual report, within said period, or at any time prior to the commencement of this action, and that by reason of the failure, refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers and directors of the said corporation, and each of the defendants, as a director of the said corporation, became and were are still are jointly and severally and individually liable for all the debts of such corporation that were contracted during the year next preceding the time when such report should have been filed, to-wit, within the sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants and each of them, were in default as to the filing of the said report the said corporation was carrying on the business of mining in the said State of Colorado, and contracted a debt to and in favor

57 of George B. Beardsley, then and at all times mentioned herein a resident and citizen of the State of Colorado, in the sum of Forty eight and 16 100 dollars ($48.16) for 17,170 pounds of coal sold and delivered to said The Neptune Mining Company, by said Beardsley, at an agreed price and which was of the reasonable value of Forty eight and 16 100 dollars ($48.16). Said coal was so sold and delivered on November 14th, 1902, November 21st, 1902, and December 4th, 1902, in three lots of 6370, 6900 and 3620 pounds, respectively, and said debts, under the laws of Colorado,

draws interest at eight per cent. (8%) per annum from December 4th, 1902. No part of said indebtedness has ever been paid.

That afterwards and on the 13th day of January, 1904, the said George B. Beardsley sold, assigned and transferred, and by his written assignment of said date, all of his claim and demand against said The Neptune Mining Company, for value received and in good faith, to William Woodside, the plaintiff herein, who is now the owner thereof; and that the said The Neptune Mining Company, and each of the said defendants, as the Directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that especially the said defendants in this action, as members of the Board of Directors of said The Neptune Mining Company, by reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly, severally and individually liable for the said debt.

Wherefore, plaintiff prays for judgment against the said defendants, and each of them, on this fourth cause of action, for the sum of Forty eight and 46 100 dollars ($48.46) with interest from December 4th, 1902, at the rate of eight per cent. per annum.

58 For a fifth cause of action, against the said defendants, plaintiff alleges that, as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all the times herein mentioned, and that the defendants were directors thereof at all the times herein mentioned, and *for* and after the said 1st day of January A. D. 1903 for a period of more than sixty days immediately following the said date and until the commencement of this action, and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of the said corporation and said officers, to file an annual report within sixty days next after the 1st day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any annual report, within said period, or at any time prior to the commencement of this action; and that by reason of the failure, refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers and directors of the said corporation, and each of the defendants, as a director of the said corporation, became and were and still are jointly, severally and individually liable for all the debts of such corporation that were contracted during the year next preceding the time when such report should have been filed, to-wit, within sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants and each of them, were in default as to the filing of the said report,

the said corporation was carrying on the business of mining in the said State of Colorado, and contracted a debt to and in favor
59 of Bruce Barry, then and at all times mentioned herein a resident and citizen of the State of Colorado, in the sum of Fifty four dollars ($54.00) for work and labor done and performed for said The Neptune Mining Company, at its request, as a miner. Said Barry worked as a miner for said The Neptune Mining Company, between Nov. 15, 1902, and Dec. 19, 1902, eighteen days, at the rate of $3.00 per day; and no part of said debt has ever been paid.

That afterwards, and on the 13th day of January 1904, the said Bruce Barry sold, assigned and transferred, by his written assignment of said date, all of his claim and demand against said The Neptune Mining Company, for value received, and in good faith to William Woodside, the plaintiff herein, who is now the owner thereof; and that the said The Neptune Mining Company, and each of the said defendants, as the directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that especially the said defendants in this action, as members of the Board of Directors of said The Neptune Mining Company, by reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly, severally, and individually liable for the said debt.

Wherefore, plaintiff prays for judgment against the said defendants, and each of them, on this fifth cause of action, for the sum of Fifty four dollars ($54.00) with interest from January 24th, 1903, at the rate of eight per cent. (8%) per annum.

For a sixth cause of action, against the said defendants, plaintiff alleges, that as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all the times herein mentioned, and that the defendants were di-
60 rectors thereof at all times herein mentioned and from and after the said first day of January A. D. 1903, for a period of more than sixty days immediately following the said date and until the commencement of this action, and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of the said corporation and said officers, to file an annual report within sixty days after the 1st day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any annual report, within said period or at any time prior to the commencement of this action; and that by reason of the failure, refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers and directors of the said corporation and each of the defendants, as a director of the said corporation, became and were and still are jointly, severally and individually liable for all the debts of said corporation that were contracted during the

year next preceding the time when such report should have been filed, to-wit, within sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants and each of them, were in default as the filing of the said report, the said corporation was carrying on the business of mining in the said State of Colorado, and contracted a debt to and in favor of Harry Glime, then and at all times mentioned herein a resident and citizen of the State of Colorado, in the sum of Thirty one and 50/100 dollars ($31.50) for work and labor done, and performed for said The Neptune Mining Company, at its request, as a carpenter; said Henry Glime worked as a carpenter for said The Neptune Mining Company, for nine days at the rate of $3.50 per day, between
61 January 5th and January 15th, 1903; and no part of said debt has ever been paid.

That afterwards, and on the 13th day of January 1904, the said Harry Glime, by his written assignment of said date, sold, assigned and transferred all of his claim and demand against said The Neptune Mining Company, for value received and in good faith, to William Woodside, the plaintiff herein, who is now the owner thereof; and that The Neptune Mining Company, and each of the said defendants, as the directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that especially the said defendants in this action, as members of the Board of Directors of said The Neptune Mining Company, by reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly, severally and individually liable for the said debt.

Wherefore, plaintiff prays for judgment against the said defendants, and each of them, on this sixth cause of action, for the sum of Thirty one and 50/100 dollars ($31.50) with interest from January 15th, 1903, at the rate of eight per cent. (8%) per annum.

And for a Seventh cause of action, against the said defendants, plaintiff alleges that, as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company, is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all the times herein mentioned, and that the defendants were directors thereof at all the times herein mentioned, and from and after the said first day of January A. D. 1903 for a period of more than sixty days immediately following the said date and until the commencement of this action; and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of said corporation and said officers to file an annual report within sixty days next after the 1st
62 day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any annual

report, within said period or at any time prior to the commencement of this action; and that by reason of the failure, refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers and directors of the said corporation, and each of the defendants, as a director of the said corporation, became and were and still are jointly, severally and individually liable for all the debts of said corporation that were contracted during the year next preceding the time when such report should have been filed, to-wit, within sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants, and each of them, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in the State of Colorado, and contracted a debt to and in favor of Thomas Roberts, then and at all times mentioned herein a resident and citizen of the State of Colorado, in the sum of Ninety one dollars ($91) for work and labor done and performed for said The Neptune Mining Company, at its request, as a miner. Said Thomas Roberts worked as a miner for said The Neptune Mining Company, between the 1st day of October and the 19th day of December 1902. No part of said debt has ever been paid.

That afterwards, and on the 13th day of January 1904, the said Thomas Roberts, by his written assignment of said date, sold, assigned and transferred all of his claim and demand against said The Neptune Mining Company, for value received and in good faith, to William Woodside, the plaintiff herein, who is now the owner thereof; and that the Neptune Mining Company and each of the said defendants as the directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that
63 especially the said defendants in this action as members of the Board of Directors, of the said The Neptune Mining Company, by reason of the premises and under the law of Colorado, and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly, severally and individually liable for the said debt.

Wherefore plaintiff prays for judgment against the said defendants and each of them, on this seventh cause of action, for the sum of Ninety one dollars ($91) with interest from December 19, 1902 at the rate of eight per cent. (8%), per annum.

For an Eighth cause of action against the said defendants, plaintiff alleges that as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all the times herein mentioned, and that the defendants were directors thereof at all the times herein mentioned and from and after the said first day of January A. D. 1903 for a period of more than sixty

days immediately following the said date and until the commencement of this action; and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of said corporation and said officers, to file an annual report within sixty days next after the 1st day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any annual report, within said period or at any time, prior to the commencement of this action; and that by reason of the failure refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers and directors of the said corporation, and each of the defendants, as a director of the said corporation became and
64 were and still are jointly and severally and individually liable for all the debts of said corporation that were contracted during the year next preceding the time when such report should have been filed, to-wit, within sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants and each of them, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in the State of Colorado, and contracted a debt to and in favor of T. F. Ryan, then and at all times mentioned herein a resident and citizen of the State of Colorado, in the sum of Eleven and 25/100 dollars ($11.25) for work and labor done and performed for said The Neptune Mining Company, at its request, as a miner. Said T. F. Ryan worked as a miner for said The Neptune Mining Company between the 5th and the 10th days of December 1902. No part of said debt has ever been paid.

That afterwards, and on the 13th day of January 1904, the said T. F. Ryan, by his written assignment of said date, sold, assigned and transferred all of his claim and demand against said The Neptune Mining Company, for value received and in good faith, to William Woodside, the plaintiff herein, who is now the owner thereof; and that The Neptune Mining Company, and each of the said defendants, as the directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that especially the said defendants in this action, as members of the Board of Directors of said The Neptune Mining Company, by reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado as herein stated, became and were and still are jointly, severally and individually liable for the said debt.

65 Wherefore, plaintiff prays for judgment against the said defendants, and each of them, on this eighth cause of action, for the sum of Eleven and 25/100 dollars ($11.25) with interest

from December 10, 1902 at the rate of eight per cent. (8%) per annum.

For a ninth cause of action, against the said defendants, plaintiff alleges that, as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all the times herein mentioned, and that the defendants were directors thereof at all the times herein mentioned and from and after the said 1st day of January A. D. 1903 for a period of more than sixty days immediately following the said date and until the commencement of this action; and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of the said corporation and said officers, to file an annual report within sixty days next after the 1st day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any annual report, within said period or at any time prior to the commencement of this action; and that by reason of the failure, refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers and directors of the said corporation, and each of the defendants, as a director of the said corporation, became and were and still are jointly severally and individually liable for all the debts of said corporation that were contracted during the year next preceding the time when such report should have been filed, to-wit; within sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st
66 day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants, and each of them, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in the State of Colorado, and contracted a debt to and in favor of William B. Wadsworth, then and at all times mentioned herein a resident and citizen of the State of Colorado, in the sum of Two Hundred Twenty Two dollars ($222) for team hire and livery furnished to said The Neptune Mining Company at its request, between the 19th day of June 1902, and the 5th of February 1903; and that no part of said debt has ever been paid.

That afterwards, and on the 18th day of January 1904, the said William B. Wadsworth, by his written assignment of said date, sold, assigned and transferred all of his claim and demand against said The Neptune Mining Company, for value received, and in good faith, to William Woodside, the plaintiff herein, who is now the owner thereof; and that the Neptune Mining Company, and each of the said defendants, as the directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that especially the said defendants in this action, as members of the Board of Directors of said The Neptune Mining Company, by

reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly, severally and individually liable for the said debt.

Wherefore Plaintiff prays judgment against the said defendants and each of them, on this ninth cause of action, for the sum of Two Hundred and Twenty two dollars ($222) with interest from February 5th 1903 at the rate of eight per cent. (8%) per annum.

67 For a tenth cause of action against the said defendants, plaintiff alleges that, as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all the times herein mentioned, and that the defendants were directors thereof at all the times herein mentioned and from and after the said 1st day of January A. D. 1903, for a period of more than sixty days immediately following the said date, and until the commencement of this action; and that under the laws of Colorado, as stated at length in the said first cause of action herein; and to which reference is made, it was the duty of the said corporation and said officers to file an annual report within sixty days next after the 1st day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any annual report, within said period or at any time prior to the commencement of this action; and that by reason of the failure, refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers and directors of the said corporation, and each of the defendants, as a directors of the said corporation, became and were and still are jointly, severally and individually liable for all the debts of the said corporation that were contracted during the year next preceding the time when such report should have been filed, to-wit, within sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants, and each of them, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in the State of Colorado, and contracted a debt to and in favor of

68 William Shellerberg, then and at all the times mentioned herein a resident and citizen of the State of Colorado, in the sum of One Hundred and Twenty three dollars ($123) for work and labor done and performed for said The Neptune Mining Company, at its request, as a miner, between the 1st day of October, and the 19th day of December 1902; and that no part of said debt has ever been paid.

That afterwards, and on the 24th day of December 1903, the said

William Shellerberg, by his written assignment of said date, sold, assigned and transferred all of his claim and demand against said The Neptune Mining Company, for value received and in good faith, to William Woodside, the plaintiff herein, who is now the owner thereof; and that the Neptune Mining Company, and each of the said defendants, as the directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that especially the said defendants in this action, as members of the Board of Directors of said The Neptune Mining Company, by reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly, severally and individually liable for the said debt.

Wherefore plaintiff prays for judgment against the said defendants and each of them, on this tenth cause of action, for the sum of One Hundred and Twenty three dollars ($123) with interest from December 19th 1902, at the rate of eight per cent. (8%) per annum.

For an eleventh cause of action, against the said defendants, plaintiff alleges that, as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company, is a mining corporation organized under the laws of the State of Colorado and that it was such corporation at all the times herein mentioned, and that the defendants were directors thereof at all the times herein mentioned and from and after
69 the 1st day of January A. D. 1903, for a period of more than sixty days immediately following the said date and until the commencement of this action; and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of the said corporation and said officers to file an annual report within sixty days next after the 1st day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any annual report, within said period or at any time prior to the commencement of this action; and that by reason of the failure, refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers and directors of the said corporation, and each of the defendants, as a director of the said corporation, became and were and still are jointly, severally and individually liable for all the debts of the said corporation that were contracted during the year next preceding the time when such report should have been filed, to-wit, within sixty days next following the 1st day of January A. D. 1903 and which were contracted after said 1st day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants, and each of them, were in default as to the filing of the said report the said corporation was carrying on the business of mining in the State of Colorado, and contracted a debt to and in favor of Charles

N. Skevington, then and at all the times mentioned herein a resident and citizen of the State of Colorado, in the sum of Fifty Two dollars ($52) for work done and labor done and performed for said The Neptune Mining Company, at its request, as a miner, between the 1st day of November and the 19th day of December 1902; and that no part of said debts has ever been paid.

That afterwards, the said Charles N. Skevington, by his written assignment, sold, assigned and transferred all of his claim
70 and demand against the Neptune Mining Company, for value received and in good faith, to William Woodside, the plaintiff herein, who is now the owner thereof; and that the Neptune Mining Company, and each of the said defendants, as the directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that especially the said defendants in this action, as members of the Board of Directors of the said The Neptune Mining Company, by reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly, severally and individually liable for the said debt.

Wherefore plaintiff prays for judgment against the said defendants, and each of them, on this eleventh cause of action, for the sum of Fifty two dollars ($52) with interest from December 19th, 1902, at the rate of eight per cent. (8%) per annum.

For a twelfth cause of action, against the said defendants, plaintiff alleges that as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all the times herein mentioned, and that the defendants were directors thereof at all the times herein mentioned and from and after the 1st day of January A. D. 1903 for a period of more than sixty days immediately following the said date and until the commencement of this action; and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of the said corporation and said officers to file an annual report within sixty days next after the 1st day of January A. D. 1903, and that the said corporation and its officers did not file the said annual report, or any annual report, within the said period or at any time prior to the commencement of this action; and that by reason of the failure, refusal or omission of the said corpora-
71 tion to file its said annual report within the time mentioned, all the officers and directors of the said corporation, and each of the defendants, as a director of the said corporation, became and were and still are jointly, severally, and individually liable for all the debts of the said corporation that were contracted during the year next preceding the time when such report should have been filed, to-wit, within sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st day of January A. D. 1903, and before the said report was made or filed.

Plaintiff further alleges that during the year next preceding the

time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants, and each of them, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in the State of Colorado, and contracted a debt to and in favor of J. W. Nelson, then and at all the times mentioned herein a resident and citizen of the State of Colorado, in the sum of Six Dollars ($6.) for work and labor done and performed for said The Neptune Mining Company, at its request, as a miner, between the 1st and 19th days of December 1902; and that no part of said debt has ever been paid.

That afterwards and on the 24th day of December 1903, the said J. W. Nelson, by his written assignment of that date, sold, assigned and transferred, all of his claim and demand against said The Neptune Mining Company, for value received and in good faith, to William Woodside, the plaintiff herein, who is now the owner thereof; and that The Neptune Mining Company, and each of the said defendants, as the directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that especially the said defendants in this action, as members of the Board of Directors of the said The Neptune Mining Company, by reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly, severally, and
72 individually liable for the said debt.

Wherefore plaintiff prays for judgment against the said defendants, and each of them, on this twelfth cause of action, for the sum of Six dollars ($6.) with interest from December 19th, 1902, at the rate of eight per cent. (8%) per annum.

For a Thirteenth cause of action, against the said defendants, plaintiff alleges that, as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of the State of Colorado, and that it was such corporation at all the times herein mentioned, and that the defendants were directors thereof at all the times herein mentioned and from and after the first day of January A. D. 1903 for a period of more than sixty days immediately following the said date and until the commencement of this action; and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of the said corporation, and said officers to file an annual report within sixty days next after the 1st day of January A. D. 1903 and that the said corporation and its officers did not file the said annual report, or any annual report, within the said period or at any time prior to the commencement of this action; and that by reason of the failure, refusal or omission of the said corporation to file its said annual report within the time mentioned, all the officers and directors of the said corporation, and each of the defendants, as a director of the said corporation, became and were and still are jointly, severally and individually liable for all the debts of the said corporation that were contracted during the year next preceding the time when such report should have been

filed, to-wit, within sixty days next following the 1st day of January A. D. 1903, and which were contracted after said 1st day of January A. D. 1903 and before the said report was made or filed.

73 Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the period when the said corporation and the said defendants, and each of them, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in the State of Colorado, and contracted a debt to and in favor of William R. Frazier, and J. F. Lemons, each of whom were then and at all the times mentioned herein, residents and citizens of the State of Colorado, and partners doing business under the name of Frazier & Lemons, carrying on a grocery business at Silver Cliff, Colorado; said debt being for the sum of Three Hundred sixty four and 5 100 dollars ($364.05) for supplies furnished to and for the boarding house keeper of the boarding house of the said The Neptune Mining Company,—one Mrs. M. A. Perry,—upon the written order and direction of J. R. Christie, the Superintendent and General Manager of said The Neptune Mining Company. The said goods so supplied to the said Mrs. M. A. Perry for the said corporation were furnished upon orders of the said Christie, of the dates following:

One on Nov. 29th, 1902, for $10.00
One on Dec. 19th, 1902, for $30.00
One on Dec. 8th, 1902, for $30.00
One on Nov. 22nd, 1902, for $70.00
One on Dec. 27th, 1902, for $20.75

And on Nov. 25th 1902, the said Mrs. Perry, the boarding house keeper, aforesaid, for said corporation at its mine, gave, to the said Frazier & Lemons, an order addressed to the said J. R. Christie for the sum of One Hundred and thirty six and 75/100 dollars ($136.75) directing the said Christie to pay to the said Frazier & Lemons, the said sum of $136.75, and charge the same to her account. This order was, on the 2nd day of January 1903, accepted by E. E. Stoehr for and in behalf of The Neptune Mining Company, the said Stoehr then being the Superintendent and General Manager of the said The Neptune Mining Company and in charge of all of its business and affairs at its mine in Custer County, Colorado.

Said Frazier & Lemons also furnished, on December 30th
74 1902, directly to the said corporation, at its request, oil to the value, and to the amount of One and 15 100 dollars ($1.15).

One D. T. Bolinger worked for The Neptune Mining Company, as a miner 25 days at $3 per day, between the 23rd day of November and the 20th day of December 1902; and he also worked 7¼ days at $3 per day, between January 3rd and January 15th, 1903; the whole amount due him for said work being Ninety six and 75 100 dollars, ($96.75) of which there was paid him the sum of Thirty one and 50 100 dollars ($31.50) leaving due to the said Bolinger the sum of Sixty five and 25 100 dollars ($65.25).

On the 22nd day of January 1903, the said Bolinger sold, and assigned his claim for the said balance to the said Frazier & Lemons, and on the same day E. E. Stoehr, as the Superintendent and Gen-

eral Manager of the said The Neptune Mining Company, approved, accepted and agreed to pay to the said Frazier & Lemons the said balance of Sixty Five and 25 100 dollars ($65.25) by his written endorsement upon the statement and assignment thereof.

These various items, aggregating Three Hundred sixty four and 5 100 dollars ($364.05) remained and still remain wholly unpaid, and were each and all due from the said The Neptune Mining Company to the said Frazier & Lemons on the 16th day of January 1904, on which day the said Frazier & Lemons, by their written assignment of said date, sold, assigned and transferred all of their said claim and demand against said The Neptune Mining Company to William Woodside, for value received and in good faith,—said William Woodside, the plaintiff herein, being now the owner thereof; and that the Neptune Mining Company, and each of the said defendants, as the directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that specially the said defendants in this action, as members of the Board of Directors of the said The Neptune Mining Company, by reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation and its officers,
75 to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly, severally and individually liable for the said debt.

Wherefore plaintiff prays for judgment against the said defendants, and each of them, on this thirteenth cause of action, for the sum of Three Hundred and Sixty four and 5 100 dollars ($364.05) with interest from the 22nd day of January A. D. 1903, at the rate of eight per cent. (8%) per annum.

For a Fourteenth cause of action, against the said defendants, plaintiff alleges that, as is alleged more fully in the statement of the first cause of action, and to which reference is hereby made, The Neptune Mining Company is a mining corporation organized under the laws of Colorado, and that it was such corporation at all the times herein mentioned; and from and after the 1st day of January A. D. 1903 for a period of more than sixty days immediately following the said date and until the commencement of this action, and at all the time herein mentioned, the defendants were directors thereof; and that under the laws of Colorado, as stated at length in the said first cause of action herein, and to which reference is made, it was the duty of the said corporation and said officers to file an annual report within sixty days next after the 1st day of January A. D. 1903 and that the said corporation and its officers did not file the said annual report, or any annual report, within the said period or at any time prior to the commencement of this action; and that by reason of the failure, refusal or omission of the said corporation to file its said annual report, within the time mentioned, all the officers and directors of the said corporation, and each of the defendants, as a director of the said corporation, became and were and still are jointly, severally and individually liable for all the debts of the said corporation that were contracted during the year next preceding the time when such report should have been filed, to wit, within sixty days next following the 1st day of January A. D. 1903, and which were

contracted prior said 1st day of January A. D. 1903, and be-
76 fore the said report was made or filed.

Plaintiff further alleges that during the year next preceding the time when such annual report should have been made and filed, and during the time when the said corporation and the said defendants, and each of them, were in default as to the filing of the said report, the said corporation was carrying on the business of mining in the State of Colorado, and contracted a debt to and in favor of H. W. Foss, then and at all times mentioned herein a resident and citizen of the State of Colorado, in the sum of Six Hundred forty three and 29 100 dollars ($643.29) for coal furnished sold and delivered, and for work and labor done, and for teaming, and for goods sold and delivered, as hereinafter stated, to and for the said The Neptune Mining Company, at its request, between July 3rd, 1902 and February 24th, 1903.

Between July 3rd, 1902 and February 17th, 1903 the said H. W. Foss, hauled supplies and machinery, brick, pipe, shingles, tanks etc., for said corporation to the amount and of the value of Seventy one dollars ($71.).

On December 1st, 1902, he furnished to one Morrison, upon the order and direction of the said defendant, by its Superintendent and General Manager E. E. Stochr, groceries to the amount and value of Ten Dollars ($10.).

On January 13th, 1903, Mrs. M. A. Perry, who was the boarding house keeper of the boarding house of the said defendant corporation, gave to the said H. W. Foss, an order upon the said company for the sum of Thirty two and 70 100 dollars ($32.70) to be paid out of moneys owing to the said Mrs. Perry by the said Company which order was, on the 14th day of January 1903, accepted for and in behalf of the said Company, by E. E. Stochr, then the Superintendent and General Manager of the said Company, and in full charge of its affairs.

One W. J. Bradley, worked during January 1903 for the said The Neptune Mining Company, as a watchman, and there became due to him from the said Company, the sum of Forty four dollars ($44)
for his said services, and on February 18th, 1903, the said
77 Bradley gave to the said Foss an order for the said amount of $44 upon the said The Neptune Mining Company which order was, on Feb. 18th, 1903 accepted by the said corporation by E. E. Stochr, its Superintendent and General Manager.

Between the 3rd day of July 1902, and the 24th day of February 1903 the said H. W. Foss, sold and delivered to the said The Neptune Mining Company, at its request and for its use and benefit, 202 and 41 200 tons of coal, at prices varying from $5.25 to $6.25 per ton, the respective prices being in each case agreed upon between the said Foss and the said corporation, the aggregate value of the coal so furnished being Twelve Hundred and Thirty and 3 100 dollars ($1230.03) upon which there was paid from time to time by the said corporation the sum of Seven Hundred and Forty and forty four & 44 100 dollars ($744.44) leaving due to the said Foss upon said coal account the sum of Four Hundred eighty five and 59 100 dollars ($485.59).

Nothing further was paid or has been paid at any time upon any of these items, and there remained due from the said The Neptune Mining Company, to the said H. W. Foss on December 27th, 1902, for and on account of the matters aforesaid, the said sum of Six Hundred and Forty three and 29 100 dollars ($643.29); and on said day, the said H. W. Foss, by his written assignment of that date, sold, assigned and transferred all of his said claim and demand, for value received and in good faith, to William Woodside, the plaintiff herein, who is now the owner thereof; and that The Neptune Mining Company, and each of the said defendants as the directors thereof, became and were and are indebted to this plaintiff for and on account thereof; and that especially the said defendants in this action, as members of the Board of Directors of said The Neptune Mining Company, by reason of the premises and under the laws of Colorado, and by reason of the failure and omission of the said corporation and its officers to file its annual report as required by the laws of Colorado, as herein stated, became and were and still are jointly several-
78 ally and individually liable for the said debt.

Wherefore, plaintiff prays for judgment against the said defendants, and each of them, on this fourteenth cause of action, for the sum of Six Hundred and Forty three and 29 100 dollars ($643.29) with interest from the 24th day of February 1903, at the rate of eight per cent. (8%) per annum.

Wherefore Plaintiff prays for the judgment of this Court against the said defendants, and each of them, for the sum of Fifty four Hundred and Ninety nine and 91 100 dollars ($5,499.91) with interest thereon as prayed for in the statements of the respective causes of action; and for costs.

JOHN R. SMITH,
Attorney for Plaintiff.

(Endorsed:) No. 168, Law. In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division. William Woodside plaintiff, *vs.* Albert Vasey *et al.* Amended Complaint. Filed July 9th, 1904. A. J. Van Duzee, Clerk, by J. O. Stewart, Deputy.

79 And on the 27th day of July 1905 there was filed in the office of the Clerk of said Court in this cause a Replication, which is in words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRKS, E. E. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHUELTE, L. J. ROWEL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Now comes the said plaintiff and replying to the Amended and Substituted Answer filed in this cause, and without waiver of any

rights of this plaintiff, under the first answer of said defendants, saith;

Plaintiff denies that the judgments in favor of the plaintiff herein and the Westcliffe Hardware Company set forth in the first and second counts of the complaint were obtained by any fraud of the plaintiffs in said judgments, or either of them, and denies that the Court in which said judgments were rendered was without jurisdiction to enter any such judgment, and denies that the service of summons upon Orlando Lough as a stockholder or the return that the said Lough was a stockholder, or either of them, were false or fraudulent in any manner whatever, and alleges the truth to be that the said Lough was at the time of service upon him of the summons in each of the said causes a registered holder of stock and a
80 stockholder in the Neptune Mining Company.

That as to the statements in said Answer as to the alleged dealings between the said Lough and one E. J. Christie or one *Eumndt* this plaintiff has not and cannot obtain any information or knowledge upon which to base a belief, and denies the same; and denies that the attorneys of the plaintiffs, or any of them, in the said suits were informed that the said Lough was not a stockholder, or even that he claimed not to be a stockholder; and denies any collusion whatever between the plaintiff in either of the said suits with said Zmundt or said E. J. Christie, or either of them, for any purpose whatever.

And further replying to the further answer and defense on page 4 of said Amended and Substituted Answer, plaintiff saith:

That as to all of the matters contained therein this plaintiff has not sufficient knowledge or information on which to base a belief, and denies the same and all thereof, and alleges the truth to be that neither this plaintiff nor any of the persons or corporations assigning their claims to him had any knowledge or notice whatever with respect to the details of the organization, management or operation of the office business of the Neptune Mining Company, or of changes in its officers, or were in any manner concerned therewith or therein, or that they had or that any of them had at any time any knowledge or notice whatever of the existence or contents of any By-Laws of the said corporation, and that the only knowle*gde* or notice which this plaintiff or any of his said assignees had with respect to the articles of Incorporation arose merely from the fact that such Articles were filed with the officers of the State of Colorado, as provided by law. And plaintiff denies that the only connection which the defendants had with the Neptune Mining Company was as stockholders, and alleges the fact to be that each and every of the defendants, were, prior to the 13th day of November A. D. 1902, duly elected and chosen as the directors of the said corporation The Neptune Mining Company, and accepted such office and acted
81 therein, and had full knowledge and notice, each of them, of all of the business affairs of the said corporation and of the fact that it had been and was then operating the mining property known as the Bull Domingo Mine Company in Custer County, Colorado, employing a large number of men in development work thereon

and in the construction of a mining plant and the repair and operation of a mill and in other ways incident to the business of a mining corporation.

Plaintiff denies that E. J. Christie or any one else ever at any time represented to this plaintiff or to any of the employees of the corporation or persons dealing with such corporation who have assigned their claims to this plaintiff, that if they would extend credit to the said corporation, that if the said corporation did not pay the said indebtedness, and pay for the said labor which might be performed for said corporation, that as the Secretary and Manager and controller of said corporation he would fail to file the annual report required by the Statutes of the State of Colorado, and that thereby the said several persons would be enabled to pursue the persons whom he had named as directors; and denies that any such or similar representation was made or any representation or statement in substance or effect of that nature; and denies that any credit was extended by any person to the said corporation The Neptune Mining Company, by reason of any such statements, and alleges the fact to be that all of the work that was done for the said corporation and all the goods and material supplied and services rendered, was done, performed, supplied and rendered in the ordinary course of business by this plaintiff and by each of his assignees in good faith and constituted and are the honest indebtedness of the said corporation incurred by said incorporation in the ordinary course of business and in the operation of said property, as aforesaid, and not otherwise.

And further replying to that paragraph of said Answer commencing at the foot of page 5 and stated as a further, separate, and distinct defense, plaintiff denies the same and all thereof both as to
82 himself and as to each and every of his assignees.

And further replying, plaintiff denies that the Statute of Limitations of the State of Colorado quoted in the Answer, or any other Statute or Provision of the Laws of the State of Colorado, bars or limits in any manner the action of this plaintiff to recover upon the causes of action set forth in the complaint, and alleges the truth to be that the Statute of Limitations of the State of Colorado with respect to the liability of directors by reason of their failure to file an annual report is not a defense until one year next after the failure to file the annual report required by law and meaning thereby one year next after the expiration of the first sixty days in each year.

Wherefore Plaintiff prays judgment as in his complaint prayed for.

S. K. TRACY,
JOHN R. SMITH,
Attorneys for Plaintiff.

(Endorsed:) Replication. Filed July 27, 1905. A. J. Van Duzee, Clerk, by J. O. Sterwrt, Deputy.

83 And on the 24th, 25th and 26th days of October 1905 the following proceedings were had by said Court in this cause as appears of record on pages 544, 545 and 546 of Record No. 1 of said Court, to-wit:

No. 168.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY ET ALS., Defendants.

Now this 24th day of October A. D. 1905, the above entitled cause comes before the Court for trial in the regular order, the plaintiff appearing by J. R. Smith, Esq., and S. K. Tracy, Esq., his attorneys and defendants appearing by Messrs. Jamison & Smyth, their attorneys, thereupon the parties hereto file in writing their waiver of jury trial, and agreed to try said cause to the court, thereupon the hearing of the testimony was begun and continued until the time for adjournment of court for the day and further hearing in the case was postponed until 9 o'clock tomorrow morning.

No. 168. Law.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY ET ALS., Defendants.

Now this 25th day of October A. D. 1905, this cause again comes before the court, on the trial thereof, and the parties all being present the hearing of the testimony was resumed and continued until closed and both parties rest. Thereupon the defendant moved the court that the court do dismiss the cause for want of jurisdiction, and render judgment in favor of defendants, thereupon the argument of counsel upon said motion was begun and not being concluded at the hour for the adjournment of the court for the day, the further hearing of the cause was postponed until to-morrow morning at 9 o'clock.

84 No. 168.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY ET ALS., Defendants.

Now this 26th day of October A. D. 1905 this cause comes again before the court in the trial thereof, and the counsel for parties all being present the hearing of the arguments of counsel upon the motion that judgment be duly entered in favor of defendants, was resumed and continued, until concluded and said motion was, together with the demurrer of defendant to the petition herein, submitted to the court and by the court taken under advisement.

On the 24th day of October 1905 there was filed in the office of the Clerk in this cause, a Written Waiver of Jury, which is in words and figures following:

In the Circuit Court of the United States, Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY ET ALS., Defendants.

By agreement, jury trial is waived by both parties to the above entitled cause.

JOHN R. SMITH,
S. K. TRACY,
Att's for Plaintiff.

WILLIAMSON & WILLOUGHBY,
JAMISON & SMYTH,
FRANCE & ROWEL,
Attorneys for Defendants.

Filed October 24, 1905.
A. J. VAN DUZEE, *Clerk.*

85 And on the 26th day of October 1905 there was filed in the office of the Clerk of said Court in this cause, a Demurrer on part of E. J. Christie, which demurrer is in words and figures following, to-wit:

In the Circuit Court of the United States for Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY ET AL., Defendants.

Demurrer.

Comes now the defendant E. J. Christie and demurrs to the complaint and specifies the reasons as follows:

It appears from the allegations of the complaint that the cause of action accrues on the first day of March 1903 and it is conceded that the statutes of limitation in Colorado is one year and it further appears that the summons in this case was not served upon the defendant E. J. Christie until October 11th, 1904, more than one year after the cause of action accrued. It appears from the allegation of the complaint and the time of the commencement of this suit that the claim of the plaintiff is barred by the statute of limitations as against the defendant E. J. Christie.

Wherefore, the defendant E. J. Christie asks to be dismissed and for costs.

WILLIAMS & WILLOUGHBY,
JAMISON & SMYTH,
Attorneys for Defendants.

(End-rsed.) Demurrer as to E. J. Christie. Filed Oct. 26, 1905. A. J. Van Duzee, Clerk, by J. O. Stewart, Deputy.

86 And on the 26th day of October 1905 there was filed in the office of the Clerk of said Court in this cause an Amendment to Amended and Substituted Answer, which is in words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,

vs.

ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRKS, E. E. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHUELTE, L. J. ROWEL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Amendment to Amended and Substituted Answer.

Comes now the defendants except E. J. Christie and E. H. Holt, and for an amendment to their amended and substituted answer, and each count thereof, state:

That this court is without jurisdiction to try and determine this suit in that the first and second counts of the plaintiff's petition are based upon two several judgments alleged to have been obtained in the district court of Custer County, Colorado, against the Neptune Mining Company and that each of said judgments are based upon a large number of separate claims or accounts held by a large number of persons against the said the Neptune Mining Company and purporting to have been assigned to the plaintiff herein and that no one of said claims or accounts held by any person or individuals, so purported to have assigned said claims or accounts, exceed in value or amount the sum of Two Thousand dollars ($2,000) and because the purported assignment to the plaintiff of said several accounts or claims was and is for the purpose of collection only and each

87 of said accounts or claims so assigned is now owned and have at all times been owned by the several individuals so pretending to have assigned the same, and further;

In that each one of the remaining accounts of said petition is based upon a claim or account held by separate individuals other than the plaintiff herein, and each of which said several claims or accounts is purported to have been assigned to the plaintiff herein and no one of said claims or accounts, purported to have been so assigned to plaintiff, by the alleged owner and holder thereof, amounts to the sum or value of Two Thousand Dollars ($2,000) and each of said accounts is now still held and owned by the said original owner and holder thereof and was so assigned to the plaintiff herein for the sole and only purpose of collection and of conferring jurisdiction thereon upon this court and these defendants therefore aver that for the reasons herein alleged, this court is without jurisdiction to hear and determine this suit on any cause of action alleged in any of the counts set out in plaintiff's petition herein.

WILLIAMSON & WILLOUGHBY,
JAMISON & SMYTH,
Att'ys for Def'ts.

Receipt of copy acknowledged this 21st day of Oct. 1905.

J. K. TRACY,
Of Counsel for Plaintiff.

(Endorsed:) Amendment to Amended and Substituted Answer. Filed Oct. 26, 1905. A. J. Van Duzee, Clerk, by J. O. Stewart, Deputy.

88 On the 2nd day of January 1906 there was filed in the office of the Clerk of this Court in said cause, an Opinion by the Court, which is in words and figures following, to-wit:

United States Circuit Court, Northern District of Iowa, Cedar Rapids Division.

No. 168.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRKS, E. E. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHUELTE, L. J. ROWEL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Action at law to recover of the defendants as directors of The Neptune Mining Company, a Colorado corporation, the sum of $5,500 as the aggregate amount of the claims or demands of the plaintiff and of thirty other persons, firms, or corporations against said mining company, which have been assigned to the plaintiff.

John R. Smith, S. K. Tracy, for the plaintiff.
Jamison & Smyth, Williamson & Willoughby, for the defendants.

REED, *District Judge:*

A jury is waived in writing and the cause is submitted to the Court. The testimony conclusively shows that the plaintiff is not in fact the owner of, or the real party in interest in, any of the claims against the mining company that have been assigned to him; that the amount of his own claim against said company is only $162.36, and that the amount of none of the separate claims of the others
89 assigned to him exceeds $650.00 while some are less than $100, but the aggregate of all amounts to $5,500; that said claims other than his own were assigned to plaintiff for the purpose of collection only; that he paid no consideration therefor, and that said assigned claims or demands in fact remain the property of the different assignors thereof, who are paying pro rata the expenses of prosecuting this action; that if plaintiff recovers upon said claims from the defendants, the amount of such recovery above the plaintiff's individual claim, will be for the benefit of the several assignors thereof, and will be distributed to them in proportion to the amount of the claim of each. It also satisfactorily appears that said several claims other than that of the plaintiff, were assigned to him by the

different owners thereof to be added to the amount of plaintiff's claim to create an amount in excess of $2,000 for the express purpose of enabling the plaintiff to sue thereon in this court.

It also appears that in October 1903, the plaintiff recovered judgment in the district court of Custer county, Colorado, against the Neptune Mining Company for the amount of his own claim, to-wit, $162.36, and a part of the other claims so assigned to him, such judgment being for the amount of $2,724.46.

Such judgment does not change the plaintiff's right to or interest in, the several claims that were so assigned to him. The recovery thereof was but one step towards the collection of said claims for the benefit of the several assignors thereof, and the court may go back of it to ascertain upon what it is founded, who are the real parties in interest therein and the real transaction between the plaintiff and said several assignors, to determine whether or not the case is one of federal jurisdiction.

Farmington *vs.* Pillsbury 114 U. S. 138-146.

90 This was a suit upon municipal bonds and coupons, in which one of the questions involved was the real ownership of the coupons as affecting the jurisdiction of the circuit court.

The court after stating the facts said:

"It is a suit for the benefit of the owners of the bonds. They are to receive from the plaintiff one half of the net proceeds of the case they have created by their transfer of the coupons gathered together for that purpose. The suit is their own in reality, though they have agreed that the plaintiff may retain one half of what he collects for the use of his name and his trouble in collecting. It is true the transaction is called a purchase in the papers that were executed, and that the plaintiff gave his note for $500 but the time for payment was put off for two years, when it was no doubt supposed the result of the suit would be known. No money was paid, and as the note was not negotiable, it is clear the parties intended to keep the control of the whole matter in their own hands, so that if the plaintiff failed to recover the money he could be released from his promise to pay. In the language of Mr. Justice Field, speaking for the court in Detroit *vs.* Dean 106 U. S., 537, 541, applied to the facts of this case, the transfer of the coupons was 'a mere contrivance, a pretence, the result of a collusive arrangement to create in favor of this plaintiff' a fictitious ground of federal jurisdiction."

The plaintiff's interest in, or right to the assigned claims upon which he sues in this action, is stated by him as follows:

After stating that his own claim against the Neptune Mining Company is $162.36 he says:

"The assignments of the accounts to me, and of the judgment aside from my personal account, were made to me for the sole purpose of beginning suit in my name, and to thus save expenses. I have no interest in any of said claims or judgments except my individual claim. The actual ownership of the said judgment and the proceeds thereof, and the accounts and the proceeds thereof, be-

long to the several assignors, and I am to account to them and to pay them such proceeds in case I collect them."

As none of the claims or demands so assigned to the plaintiff are of sufficient amount to authorize an action thereon in a court of the United States, it seems clear that this action cannot be maintined in this court.

Williams *vs.* Nottawa, 104 U. S., 209.
Bernards Township *vs.* Stebbins, 109 U. S., 341.
Lake County *vs.* Dudley, 173 U. S., 243.
Waite *vs.* Santa Cruz, 184 U. S., 302-325.

In Williams *vs.* Notta above, it is said:

91 "Congress when it passed the act of 1875 * * * was especially careful to guard against the consequences of collusive transfers to make parties, and imposed the duty on the court, on its own motion, without waiting for the parties to stop all further proceedings and dismiss the suit the moment anything of the kind appeared."

In Bernards Township *vs.* Stebbins, 109 U. S. 341-356, the court said:

"The decision in Williams *vs.* Nottawa 104 U. S. 209, establishes that the circuit court of the United States cannot, since the act of 1875, entertain a suit upon municipal bonds payable to bearer, the real owners of which have transferred them to the plaintiffs of record for the sole purpose of suing thereon in the courts of the United States for the benefit of such owners, who could not have sued in their own names, either by reason of being citizens of the same state as the defendant, or *by reason of the insufficient value of their claims.*"

In Waite *vs.* Santa Cruz, 184 U. S. the court quotes Section five of the act of March 3rd 1875 (which is not repealed by the act of 1887-8) reviews its prior decisions, and in conclusion says:

"We adjudge that, as the plaintiff does not own the bonds or coupons in suit, but holds them for collection only, the circuit court was without jurisdiction to render judgment upon any claim or claims, whether bonds or coupons held by a single person, firm or corporation against the city and which, considered apart from the claim or claims of other owners, could not have been sued on by the real owner *or by reason of the insufficient value of their claims.*"

This action does not therefore involve a controversy within the jurisdiction of this court, and no other question in the case need be considered.

It is accordingly dismissed without prejudice, for want of jurisdiction, and at the plaintiff's costs.

Filed Jan'y 2, 1906.

A. J. VAN DUZEE, *Clerk.*

92 And on the 2nd day of January 1906 the following proceedings were had by said Court in this cause as appears of record on page 564 of Record No. 1 of said Court, to-wit:

No. 168.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY ET ALS., Defendants.

Now this 2nd day of January A. D. 1906, this matter comes before the Court, the same having heretofore been tried to the court and fully submitted and the Court being now fully advised in the premises:

It is Ordered and adjudged that said cause be and the same hereby is dismissed without prejudice for want of jurisdiction, and that the defendants Albert Vasey, W. H. Laybourn, E. E. Stoehr, Henry Dirks, E. H. Holt, E. L. Pieper, Gerd Diekhoff, Harm Schuelte, L. J. Rowell, John A. Meissner, and E. J. Christie, have and recover of and from the plaintiff, William Woodside the costs of these proceedings taxed at $36.30 and that execution issue therefor. To all of which plaintiff duly excepted.

93 And on the 19th day of April A. D. 1906 there was filed in the office of the Clerk of said Court in this cause a Bill of Exceptions, and an Agreed Statement of Facts, which are in words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRKS, E. E. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHUELTE, L. J. ROWEL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Bill of Exceptions.

Be it remembered, That at the trial of the above entitled cause the following testimony was given, and proceedings had.

The deposition of William Woodside, called and sworn as a witness on behalf of plaintiff, read, as follows:

WILLIAM WOODSIDE—direct examination:

I am a citizen of the United States, and have been a resident of Custer County, Colorado, during more than 20 years last past, and was a citizen during all of the period between January 1st, 1902 to the present time.

I know the Neptune Mining Company, which is a corporation and was carrying on the business of mining at the Bull Domingo Mine, in Custer County, in the State of Colorado, during the period
94 of time from April, 1902 and June 30th, 1903.

That between said dates, and particularly between the 1st day of November 1902 and the 30th day of March 1903, I sold and

delivered to the said Neptune Mining Company, at its special instance and request made by the company through E. J. Christie and E. E. Stoehr, respectively, and who were at the time of such requests the Superintendent and General Manager of said company, in said Custer County, goods, wares, and merchandise, consisting of hardware supplies, powder, and oil, to the amount and value of $162.36 after allowing all just credits. That I so furnished more supplies, but that all thereof, except said sum of $162.36 has been paid by said company. That said sum is now due to me from said company, and has been so due ever since the 15th day of April 1903; that said E. E. Stoehr the last Manager and Superintendent in this County, at or about the time of his departure from this County, on or about March 30th, 1903, admitted the correctness of my account and promises to pay the same. That I have never colluded with any person whomsoever, for the purpose of running said company into debt. That said goods, were furnished and delivered in good faith, and that the articles were used by The Neptune Mining Company upon *upon* the Bull Domingo Mine, for the use and benefit of the company. That I brought an action in the District Court of Custer County, in the State of Colorado, for the said claim and demand, and that in said suit so brought I also included claims and demands of the following named persons, for the respective amounts.

Ulley Camper	$92.00
B. W. Gilmore	783.30
S. H. Pope	286.57
Roy Lapsley	326.50
Jerry Starr	120.75
The Vulcan Sheet Metal Co.	360.63
John R. Smith	172.50
E. Gimler	407.85
H. E. Fossette	12.00

That each and every of the accounts above mentioned were, by the several and respective parties assigned to me prior to the commencement of the action in the District Court of Custer
95 County, brought by me against the Neptune Mining Company, for collection only except as to the sum originally due me. That prior to the commencement of the present action in the Federal Court in Iowa, each and all of the several judgments, claims and demands mentioned in the Amended Complaint on file in this action, which amended complaint is now before me, in the causes of action respectively, first to fourteenth, inclusive were, by the several parties in said amended complaint set forth as having furnished materials, supplies, and as having done work and labor, and to the amounts in said several *causes* of action set forth in said amended complaint, duly and regularly assigned and set over, to me, for collection only, their several accounts, and the holders of said judgments did assign the same to — for collection only.

That no part of said claims, demands or judgments have been paid to me. That each and every thereof are now due and payable

to me and has been so due and payable for a time prior to the commencement of this action.

I have often talked with Mr. Christie and Mr. Stoehr both concerning the affairs of The Neptune Mining Company, and they each assured me repeatedly that the company would promptly pay its contracted indebtedness; I never at any time was informed, nor by any intimation or suggestion, led to believe that there was any limitation upon the power and authority of either of them to contract indebtedness in the name of the company while they were in charge of the mine. I had no knowledge whatever of the provisions of the By-Laws of the company.

96 Cross-examination:

The assignments of the accounts to me, and of the judgments, aside from my personal account, were made to me for the sole purpose of beginning suit in my name, and to thus save expenses; I have no interest in any of said claims or judgments except my individual claim; the actual ownership of each of said claims and the said judgments and the proceeds thereof, and the accounts and the proceeds thereof, belong to the several assignors, and I am to account to them and pay them such proceeds in case I collect them.

* * * * * * *

The plaintiff offers in evidence exemplified copy of the judgment of the District Court of Custer County, Colorado, in the suit of William Woodside, plaintiff *vs.* The Neptune Mining Company, defendant, the same being marked, "Plaintiff's Exhibit No. 1" also exemplified copy of judgment of the District Court of Custer County Colorado, in the suit of Helmith Knuth and August Rosch, partners, as The Westcliffe Hardware Company, plaintiffs, *vs.* The Neptune Mining Company, defendants, which is marked "Plaintiff's Exhibit No. 2."

97 PLAINTIFF'S EXHIBIT NO. 1.

STATE OF COLORADO,
County of Custer, ss:

In the District Court of Custer County.

WILLIAM WOODSIDE, Plaintiff,
vs.
THE NEPTUNE MINING COMPANY, Defendant.

Default.

On ths 3rd day of October A. D. 1903, upon application of John R. Smith, Esq., attorney of record for the plaintiff, for a default to be entered against The Neptune Mining Company, a corporation the defendant herein, and it appearing from the summons issued and duly returned and filed herein, that service was duly had thereof,

on The Neptune Mining Company, a corporation, defendant aforesaid, personally on Orlando Lough, a stockholder of said defendant company. No President or other Chief officer, secretary, treasurer, cashier or other general agent of said defendant company being found in said County of Custer and State of Colorado, together with a copy of the complaint filed herein, and no answer, demurrer, or other motion having been filed herein to said complaint, and the time having expired for filing any answer, demurrer or other motion, and no further time having been granted by the Court, and The Neptune Mining Company, the defendant comes not, neither does its attorney nor any person for it in this matter, it is considered and ordered that the said defendant, The Neptune Mining Company, be and hereby is in default and that said default be and hereby is entered against said defendant The Neptune Mining Company, for the want of an answer, demurrer or other motion to plaintiff's complaint.

JOHN H. LEARY, *Clerk.*

98 STATE OF COLORADO,
County of Custer, ss:

I, John H. Leary, clerk of the District Court within and for said county and State, do hereby certify the above and foregoing to be a full, true and complete copy of default entered in the case wherein William Woodside is plaintiff, and The Neptune Mining Company is defendant, as the same appears from the records of my office.

Witness my hand and the seal of said Court, at Silver Cliff, this 14th day of November A. D. 1903.

[SEAL.] JOHN H. LEARY, *Clerk.*

Double Certificate.

STATE OF COLORADO,
County of Custer:

Certificate of Judge.

I, Morton S. Bailey, Presiding Judge of the District Court, within and for the Eleventh Judicial District of the State of Colorado, the same being a Court of Record, having common law jurisdiction, a Seal and a Clerk, hereby certify that John H. Leary, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, Clerk of the District Court within and for the County of Custer, and State of Colorado, duly appointed and qualified as such, and the keeper of the Seal and the custodian of the Records of said Court; that I am well acquainted with the hand writing of the said Clerk, and know his signature and verily believe the signature to the said certificate and attestation to be the genuine signature of the said Clerk; and the Seal affixed to said certificate, is the Seal of the said District Court; that full faith and credit are due and of right ought to be given to all the official acts of the said Clerk in Courts of Record and

elsewhere, and that the said certificate and attestation are in due form of law and by the proper officer.

Witness my hand and seal this 21st day of October A. D. 1905.

99 MORTON S. BAILEY. [SEAL.]
Presiding Judge of the District Court within and for the Eleventh Judicial District of the State of Colorado.

STATE OF COLORADO,
County of Custer, ss:

Certificate of Clerk.

I, John H. Leary, Clerk of the District Court of the Eleventh Judicial District of the State of Colorado, the same being a Court of Record, hereby certify that Morton S. Bailey, Presiding Judge whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now Presiding Judge of the District Court of the Eleventh Judicial District of the State of Colorado, duly elected and qualified; that I am well acquainted with the hand writing of the said Judge, and know his signature and verily believe the signature to the foregoing certificate and attestation to be the genuine signature of the said Judge.

Witness my hand and official seal the 21st day of October A. D. 1905.

[SEAL.] JOHN H. LEARY,
Clerk of the District Court of the Eleventh Judicial District of the State of Colorado.

100 STATE OF COLORADO,
County of Custer, ss:

In the District Court of Custer County.

WILLIAM WOODSIDE, Plaintiff,
vs.
THE NEPTUNE MINING COMPANY, Defendant.

Judgment by Default by Clerk.

In this action the defendant, The Neptune Mining Company, a corporation having been regularly served with process, and having failed to appear and answer the plaintiff's verified complaint filed herein, the legal time for answering having expired, and no answer, demurrer or other motion having been filed, the default of the said defendant, The Neptune Mining Company, in the premises having been duly entered according to law; upon application of said plaintiff to the clerk, judgment is hereby entered against said defendants in pursuance of the prayer of said complaint.

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is ordered, adjudged and decreed that the said plaintiff

William Woodside, do have and recover of and from the said defendant, The Neptune Mining Company, the sum of Twenty seven hundred twenty four and 46 100 dollars ($2724.46) as principal, and the further sum of One Hundred fifty two 67 100 dollars ($152.67) dollars interest, with interest on said amounts at the rate of eight per cent. per annum from the date hereof till paid, together with said plaintiff's costs and disbursements accrued and to accrue, whereof let execution issue, and it is further ordered, adjudged and decreed, that the attachment, not having been traversed, be and hereby is sustained in this matter.

Judgment rendered, October 3rd A. D. 1903.

JOHN H. LEARY, *Clerk.*

101 STATE OF COLORADO,
County of Custer, ss:

I, John H. Leary, clerk of the District Court within and for said County and State, do hereby certify the above and foregoing to be a full, true and complete copy of judgment entered in the case of William Woodside, plaintiff *vs.* The Neptune Mining Company defendant, as the same appears from the records of my office.

Witness my hand and the seal of said Court at Silver Cliff, Colorado, this 14th day of November A. D. 1903.

[SEAL.] JOHN H. LEARY, *Clerk.*

Double Certificate.

STATE OF COLORADO,
County of Custer, ss:

Certificate of Judge.

I, Morton S. Bailey, presiding Judge of the District Court within and for the eleventh Judicial District of the State of Colorado, the same being a Court of Record having a common law jurisdiction, a seal and a clerk, hereby certify that John H. Leary, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, Clerk of the District Court within and for the County of Custer, and State of Colorado, duly appointed and qualified as such, and the keeper of the seal and the custodian of the Records of said Court; that I am well acquainted with the hand-writing of the said Clerk, and know his signature, and verily believe the signature to the said certificate and attestation to be the genuine signature of the said Clerk; that the Seal affixed to said certificate is the Seal of the said District Court, that full faith and credit are due and of right ought to be given to all the official acts of the said Clerk in Courts of Record and elsewhere, and that the said certificate and attestation are in due form of law and by the proper officer.

Witness my hand and seal this 21st day of October A. D. 1905.

102 MORTON S. BAILEY, [SEAL.]
Presiding Judge of the District Court Within and for the Eleventh Judicial District of Colorado.

STATE OF COLORADO,
County of Custer, ss:

I, John H. Leary, Clerk of the District Court of the Eleventh Judicial District of the State of Colorado, the same being a Court of Record, hereby certify that Morton S. Bailey presiding Judge, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now Presiding Judge of the District Court of the Eleventh Judicial District of the State of Colorado, duly elected and qualified; that I am well acquainted with the hand writing of the said Judge, and know his signature and verily believe the signature to the foregoing certificate and attestation to be the genuine signature of the said Judge.

Witness my hand and official seal the 21st day of October A. D. 1905.

[SEAL.] JOHN H. LEARY,
Clerk of the District Court of the Eleventh Judicial District of the State of Colorado.

103 PLAINTIFF'S EXHIBIT NO. 2.

STATE OF COLORADO,
County of Custer, ss:

In the District Court of Custer County.

HELMUTH KNUTH and AUGUST RASCH, Partners, Doing Business under the Name and Style of The Westcliffe Hardware Company, Plaintiff,

vs.

THE NEPTUNE MINING COMPANY, Defendant.

Default.

On this 3rd day of October A. D. 1903, upon application of J. G. Schwiegert, Esq., Attorney of record for the plaintiff, for a default to be entered against The Neptune Mining Company, a corporation, the defendant herein, and it appearing from the summons issued and duly returned and filed herein, that service was duly had thereof, on The Neptune Mining Company, a corporation defendant aforesaid, personally on Orlando Lough, a stockholder of said defendant company, no President or other chief officer, Secretary, Treasurer, Cashier or other general agent of said defendant company being found in said County of Custer, and State of Colorado,

together with a copy of the complaint filed herein, and no answer, demurrer, or other motion having been filed herein to said complaint and the time having expired for filing any answer, demurrer or other motion, and no further time having been granted by the court, and The Neptune Mining Company, the defendant comes not, nor does its attorney, nor any person for it in this matter, it is considered and ordered that the said defendant, The Neptune Mining Company, be and hereby is in default, and that said default be and hereby is entered against said defendant, The Neptune Mining Company, for the want of an answer, demurrer or other motion to plaintiff's complaint.

JOHN H. LEARY, *Clerk.*

104 STATE OF COLORADO,
County of Custer, ss:

I, John H. Leary, Clerk of the District Court within and for the said County and State, do hereby certify the above and foregoing to — a full, true and complete copy of default entered in the case wherein Helmuth Knuth, and August Rosch, partners doing business under the name and style of The Westcliffe Hardware Company are plaintiffs and The Neptune Mining Company is defendant, as the same appears from the records of my office.

Witness my hand and the seal of said Court at Silver Cliff, Colorado, this 14th day of November A. D. 1903.

[SEAL.] JOHN H. LEARY, *Clerk.*

STATE OF COLORADO,
County of Custer, ss:

In the District Court of Custer County.

HELMUTH KNUTH and AUGUST RASCH, Partners, Doing Business under the Name and Style of The Westcliffe Hardware Company, Plaintiffs,

vs.

THE NEPTUNE MINING COMPANY, Defendant.

Judgment by Default by Clerk.

In this action the defendant The Neptune Mining Company, a corporation, having been regularly served with process, and having failed to appear and answer the plaintiff's verified complaint filed herein, the legal time for answering having expired, and no answer, demurrer, or other motion having been filed, the default of the said defendant The Neptune Mining Company, in the premises having been duly entered according to law, upon application of said plaintiffs to the Clerk, judgment is hereby entered against said defendant in pursuance of the prayer of said complaint. Wherefore by nature of the law and by reason of the premises aforesaid, it is ordered, adjudged and decreed that the said plaintiffs, The Westcliffe

105 Hardware Company, do have and recover of and from the said defendant The Neptune Mining Company, the sum of

Eight Hundred twenty three dollars and ninety one cents ($823.91) principal, and the further sum of Thirty eight and 45/100 dollars ($38.45) interest, with interest on said amounts at the rate of eight per cent. per annum from the date hereof, till paid, together with said plaintiff's costs and disbursements, accrued and to accrue whereof let execution issue, and it is further ordered, adjudged and decreed that the attachment, not having been traversed, be and hereby is sustained in this matter.

Judgment rendered October 3d A. D. 1903.

JOHN H. LEARY, *Clerk.*

STATE OF COLORADO,
County of Custer, ss:

I, John H. Leary, Clerk of the District Court within and for said County and State, do hereby certify the above and foregoing to be a full, true and complete copy of a judgment entered in above case, wherein Helmuth Knuth and Augustus Rosch partners, doing business under the name and style of The Westcliffe Hardware Company, are plaintiffs and The Neptune Mining Company is defendant, as the same appears from the records of my office.

Witness my hand and the seal of said Court at Silver Cliff, Colorado, this 14th day of November A. D. 1903.

[SEAL.] JOHN H. LEARY, *Clerk.*

Double Certificate.

STATE OF COLORADO,
County of Custer:

Certificate of Judge.

I, Morton S. Bailey, Presiding Judge of the District Court within and for the Eleventh Judicial District of the State of Colorado, the same being a Court of Record having a common law jurisdic-
106 tion, a Seal and a Clerk, hereby certify that John H. Leary whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, Clerk of the District Court within and for County of Custer, and State of Colorado, duly appointed and qualified as such, and the keeper of the said seal and the custodian of the Records of said Court; that I am well acquainted with the hand-writing of the said Clerk, and know his signature, and verily believe the signature to the said certificate and attestation to be the genuine signature of the said Clerk; that the seal affixed to said certificate is the Seal of the said District Court, that full faith and credit are due and of right ought to be given to all the official acts of the said Clerk in Courts of Record and elsewhere, and that the said certificate and attestation are in due form of law and by the proper officer.

Witness my hand and seal this 21st day of October A. D. 1905.

MORTON S. BAILEY. [SEAL.]

Presiding Judge of the District Court within and for the Eleventh Judicial District of Colorado.

STATE OF COLORADO,
County of Custer, ss:

I, John H. Leary, Clerk of the District Court of the Eleventh Judicial District of the State of Colorado, the same being a Court of Record, hereby certify that Morton S. Bailey, Presiding Judge whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now Presiding Judge of the District Court of the Eleventh Judicial District of the State of Colorado, duly elected and qualified; that I am well acquainted with the hand-writing of the said Judge, and know his signature and verily believe the signature to the foregoing certificate and attestation to be the genuine signature of the said Judge.

Witness my hand and official seal the 21st day of October A. D. 1905.

[SEAL.]

JOHN H. LEARY,
Clerk of the District Court of the Eleventh Judicial District of the State of Colorado.

107 Double Certificate.

STATE OF COLORADO,
County of Custer, ss:

Certificate of Judge.

I, Morton S. Bailey, Presiding Judge of the District Court within and for the Eleventh Judicial District of the State of Colorado, the same being a Court of Record having a common law jurisdiction, a Seal and a Clerk, hereby certify that John H. Leary, whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now, Clerk of the District Court within and for the County of Custer, and State of Colorado, duly appointed and qualified as such, and the keeper of the Seal and the custodian of the Records of said Court; that I am well acquainted with the hand writing of the said Clerk, and know his signature, and verily believe the signature to the said certificate and attestation to be the genuine signature of the said Clerk; that the seal affixed to said certificate is the Seal of said District Court, that full faith and credit are due and of right *out* to be given to all the official acts of the said Clerk in Courts of Record and elsewhere, and that the said certificate and attestation are in due form of law and by the proper officer.

Witness my hand and seal this 21st day of October A. D. 1905.

MORTON S. BAILEY. [SEAL.]
Presiding Judge of the District Court within and for the Eleventh Judicial District of the State of Colorado.

108 STATE OF COLORADO,
County of Custer:

Certificate of Clerk.

I, John H. Leary, Clerk of the District Court of the Eleventh Judicial District of the State of Colorado, the same being a Court of Record, hereby certify that Morton S. Bailey, Presiding Judge whose name is signed to the foregoing certificate and attestation, was at the time of the signing and ensealing of the same, and is now Presiding Judge of the District Court of the Eleventh Judicial District of the State of Colorado, duly elected and qualified; that I am well acquainted with the handwriting of the said Judge, and know his signature and verily believe the signature to the foregoing certificate and attestation to be the genuine signature of the said Judge.

Witness my hand and official seal the 21st day of October A. D. 1905.

[SEAL.] JOHN H. LEARY,
Clerk of the District Court of the Eleventh Judicial District of the State of Colorado.

109 To these two exhibits No. 1 and No. 2, and to each of them, the defendants jointly and separately object as incompetent, irrelevant, and immaterial, in that said judgments are not any evidence of any indebtedness or liability on the part of The Neptune Mining Company to the Plaintiffs, as affecting the defendants or any of the defendants; that said judgments are not competent evidence of any indebtedness as against these defendants or any of them, in that it appears that none of those defendants were parties or privies to said judgments.

It is further objected by defendants that said judgments do not in any manner tend to establish any liability on the part of these defendants or any of them, as alleged officers and directors of the Neptune Mining Company for a statute penalty, and that the defendants are not bound by the said judgments or either of them.

Ruling reserved at this time.

Plaintiff offers in evidence the assignments which are marked as Exhibits Nos. 3 to 20 both inclusive.

E. J. CHRISTIE, called by plaintiff, sworn and examined testified as follows:

Direct examination by JOHN R. SMITH:

Q. State your full name, residence, age and occupation.
A. E. J. Christie, age forty, occupation mechanic.
Q. Are you acquainted with the defendants in this case?
A. Yes sir.
Q. All of them?
A. Yes sir, all of them.
Q. How long have you known them, in a general way?

A. I have know- all of them for about three years and over, some of them longer.

Q. Were you ever connected in any way with the Neptune Mining Company

110 A. Yes sir.

Q. When and for what time?

A. The first connection with the Neptune Mining Company was as a signer of the Articles of Incorporation, the exact date of which I don't remember, but it is in some of the papers in the case.

Q. Did you ever become an officer of the Company?

Objected to by the defendants as calling for incompetent testimony, and for a conclusion and opinion of the witness; if he was ever an officer of the Company the record of the proceedings of the elections of the officers of the Company as provided by the Articles of incorporation is the best evidence; the question withdrawn.

Q. Were you ever the Secretary of this Company?

Objected to by the defendants for the same reason, if he was ever the secretary the record of the proceedings of the corporation is the best evidence;

Ruling reserved for the present.

A. I am at a loss to know whether I was Secretary, actually, or not.

Q. Did you ever act as Secretary of the Company?

Objected to by the defendants as incompetent, irrelevant and immaterial, and because the mere fact that he acted as such Secretary does not render him liable under the statute alleged in the complaint.

Ruling reserved.

A. I did act as such.

Q. For how long a time? And if possible, between what dates, as nearly as you can fix it.

A. Can you give me the date of the incorporation of the Company?

By Mr. JAMIOSON: Nov. 1901.

A. In the early part of 1902 or the latter part of 1901 I began acting as Secretary and Treasurer of the Company, the exact date, I don't remember.

Q. Of the Neptune Mining Company, you mean?

A. Yes sir.

111 Q. How long did you continue in that capacity?

A. I continued in that capacity until the 29th of May 1903,—I would like to change that last answer a little,—I continued acting in that capacity until the 29th day of May 1903.

Q. During that period did you have the control and custody of the books and records of the company?

A. Yes sir.

Q. And of its seal?

A. Yes sir.

Q. Did you keep the minutes of its meetings?

A. Assisted by my stenographer Miss Cecile Wheeler, together we kept the records.

Q. It was kept under your direction and supervision?

A. Yes sir.

Q. You saw that the proper entries were made?

A. Yes sir.

Q. And kept the books correctly?

A. Yes sir.

Q. Do you recollect a meeting which purported to be a meeting of the Board of Directors of the Neptune Mining Company, held at Grundy Center, Iowa, Nov. 13th, 1902?

(For the purpose of refreshing the witness's recollection counsel hands him paper marked Plaintiff's Exhibit No. 21.)

A. I was not present at any such meeting, but to the contrary had been confined for some time to my bed and was suffering from an attack of pneumonia.

Q. Do you know of such a meeting having been held as is mentioned in this Exhibit No. 21 handed you by the Counsel?

Objected to by the defendants as incompetent and as hearsay evidence, the witness stating he was not present at any such meeting; the ruling reserved for the present.

A. Only by hearsay.

Q. From whom did you get such information?

112 Defendant makes same objection as last interposed. Same ruling.

A. Through Mr. W. R. Laybourn, for one.

A. Any one else?

A. As to direct information I could not say that any one else had given me any direct information, unless it would be Mr. C. W. Holbrook.

Q. What relation did those two gentlemen bear to the Neptune Mining Company if you know?

Objected to by the defendants as incompetent, if they were officers or directors of the Neptune Mining Co. The record is the best evidence.

The ruling is reserved.

A. They were acting, Mr. Holbrook as President and Mr. Laybourn acting as Vice President, first Vice President, I believe.

Q. I will ask you if you know how this paper which Counsel has asked to be marked Exhibit No. 21 came to be printed, and whether you were concerned with the printing of it, or causing it to be printed or published?

Objected to by the defendants as incompetent, immaterial and irrelevant.

Ruling reserved.

A. About 30 or 40 copies of this paper were placed in my hands

after I had recovered from my illness, they were given to me by Mr. W. R. Laybourn.

Q. Did Mr. Holbrook, to your knowledge, ever see this or any of them?

A. He did, yes sir.

Q. What if any statement did Mr. Holbrook make to you with reference to this?

Objected to by the defendants as incompetent, irrelevant and immaterial and as hearsay.

Ruling reserved.

A. We talked considerable at the time, concerning these printed documents, but as to the exact conversation that took place, I don't remember all of it. I remember this much, that he informed me that the printing had been done by authority of the resolu-
113 tion which — shown here at the foot of the report.

Q. Did he inform you that proceedings had taken place as stated in that printed circular.

Defendant makes same objection as last interposed.

Ruling reserved.

A. I believe I have already stated it once in the affirmative, yes, he did so inform me.

Q. How soon was that after Nov. 13th, 1902.

A. Probably three or four days.

Q. And was it that time that he furnished you these printed slips?

A. Yes sir.

Q. You are one of the defendants in this case, are you not?

A. Yes sir.

Q. One of the gentlemen sued as a director of this company?

A. Yes sir.

Q. During this time who was in charge of the Neptune Mining Co.

Objected to by the defendant as immaterial and irrelevant.

Ruling reserved.

A. That is something that I absolutely cannot say, as to who was in charge of the Neptune Mining Co.

Q. Who were the gentlemen principally concerned in it, who conducted and had the active management of its affairs, if you know?

Objected to by the defendants as incompetent, irrelevant, and immaterial, and as suggestive and leading, and not tending to establish who were the officers and directors.

Ruling reserved.

A. I endeavored to maintain control of it most largely myself, and there were other parties interested, W. I. Alexander in selling stock, and all of the stockholders assisting in selling additional stock, together with the gentlemen whose names have already been mentioned Mr. Holbrook and Mr. Laybourn.

Q. Was Mr. Vasey concerned in it in any way, Albert Vasey, did Mr. Vasey act as a director of this company during that period?

114 Objected to by the defendants as incompetent, irrelevant, and immaterial and there is no charge or allegation, that there were acting directors, and it is not claimed or alleged that they would be liable as acting directors, but only because they were the duly elected and qualified directors.

The ruling reserved.

A. Mr. Vasey was a stockholder and acted as a director, but I believe furthermore, as 3rd Vice President, but I wouldn't be positive, as to the last.

Q. You have said that Mr. Laybourn was Vice President, was he also a director of the company and acting as such in November 1902?

Defendant makes the same objection as last interposed.
The ruling reserved.

A. He was acting also as director.
Q. How about Mr. E. E. Stoehr.

Defendant makes the same objection as last above.
The ruling reserved.

A. He was also acting as a director.
Q. And Mr. Henry Dirks.

Defendant makes the same objection as last interposed.
Ruling reserved.

A. Yes sir, acting.
Q. And Mr. Holt, Mr. E. H. Holt?

Defendant makes the same objection as last interposed.
The ruling reserved.

A. I will not be positive as to E. H. Holt, as he positively refused to act as director of the Company, at one time, and whether he actually did act I have no recollection of his doing so, unless it so appeared in that paper I think Mr. Holt refused at all times to act as a director, and I think we appointed some one as a successor.

Q. How about Mr. E. L. Pieper.

Defendants make the same objection as last interposed.
Ruling reserved.

115 A. He also acted a- a director.
Q. And Mr. Gerd Diekhoff?

Defendants make the same objection as last interposed.
Ruling reserved.

A. He also acted as director.
Q. And Mr. Harm Schuelte.

Defendants make the same objection as last interposed.
Ruling reserved.

A. Up to this particular date of Nov. 13th, 1902, I believe Mr. Harm Schuelte had not acted as director, but he did later.

Q. How soon after that.

Defendants make the same objection as last interposed.
Ruling reserved.

A. I could not remember without consulting the records.

Q. Have you possession of the records now?

A. No sir, and have not had since the 29th of May, 1903.

Q. How about Mr. L. J. Rowell, did he also act as director during that same period?

Defendants make the same objection as last interposed.
Ruling reserved.

A. Yes sir.

Q. And Mr. John A. Meissner?

Defendants make the same objection as last interposed.
Ruling reserved.

A. Mr. Meissner did not act at this particular time, though he did later.

Q. How soon after that, at what time did he act as a director?

Defendants make the same objection as last interposed.
Ruling reserved.

A. I couldn't remember the dates without consulting the records.

Q. Approximately as closely as you can state it?

Defendants make the same objection as last interposed.
Ruling reserved.

Q. Did he act as a Director during the winter of 1902-3, and prior to the 1st of March, 1903?

Defendants make the same objection as last interposed.
Ruling reserved.

116 A. I don't know whether he did or not, during 1902, but I know he did during the early part of 1903.

Q. Can you state whether he so acted prior to March 1st, 1903?

Defendants make the same objection as last interposed.
Ruling reserved.

A. I cannot without the records, but I can with the records.

Q. I will ask you to examine the records between now and the re-assembling of court at 2 o'clock so that you may advise yourself as to that, will you?

A. Yes, sir, if you will be kind enough to produce the records.

Q. As to yourself, you being also one of the defendants, did you during that period act as a director of this Company?

Defendants make the same objection as last interposed.
Ruling reserved.

A. Yes sir.

Q. Did you consult with these other gentlemen in their capacity as directors, if they were directors, from time to time?

Defendants make the same objection as last interposed.
Ruling reserved.

A. Yes sir.
Q. In the Fall of 1902 and the winter of that year, and the early months of 1903?

Defendants make the same objection as last interposed.
Ruling reserved.

A. Subject to the answer before yes sir, during the time that they acted.
Q. In what business was this Neptune Mining Company engaged during 1902 and the early part of 1903?
A. In the business of operating the Bull Domingo mine, near Silver Cliff in Custer County, Colorado.
Q. This is a metal mine, is it not?
A. Yes sir.
Q. It isn't a coal mine or anything of that kind?
117 A. No sir.
Q. Di- you know Mr. J. R. Christie?
A. Yes sir.
Q. And Mr. E. E. Stoehr?
A. Yes sir.
Q. Was Mr. J. R. Christie, during the Fall of 1902, or any other time during the year 1902, connected with the business of the Neptune Mining Co., in any way, or working for it in any capacity.

Objected to by the defendants as incompetent, irrelevant and immaterial.
Ruling reserved.

A. Yes sir.
Q. In what capacity?

Defendants make the same objection as last interposed.
Ruling reserved.

A. As business manager and general superintendent of the mine.
Q. Are you related to Mr. Christie in any way?

Defendants make the same objection as last interposed.
Ruling reserved.

A. Yes, he is my father.
Q. Did Mr. Stoehr at any time, Mr. E. E. Stoehr one of the defendants to this suit, act for the Neptune Mining Co., in the capacity other than as a director, if you know.

Defendants make the same objection as last interposed.
Ruling reserved.

A. Yes sir, in the latter part of 1902 and the early part of 1903 for a period of approximately 30 or 40 days, Mr. Stoehr went to Silver Cliffs and took possession of the Bull Domingo Mine, and

acted as superintendent and business manager of the mine, and he was also acting as a member of the Auditing Committee, the exact time I don't remember.

118 PLAINTIFF'S EXHIBIT NO. 21.

Plaintiff offers in evidence Plaintiff's Exhibit No. 21.

To which the defendants jointly and separately object as incompetent, irrelevant and immaterial, and not tending to establish that any of the defendants in this case were elected and qualified as officers and directors of the Neptune Mining Company as stated in the record, and it is further objected that it does not purport to be the records kept by the Secretary and Treasurer of the Neptune Mining Company, but purports to be a printed copy of a report of a Board of Directors' meeting of the Neptune Mining Co., held at Grundy Center, Iowa, Nov. 13th, 1902, and it is further objected that the election of Directors by the stockholders, under the Articles of Incorporation of the Neptune Mining Co., was required to be held in the State of Colorado, and that no valid election of Directors by the stockholders could occur or take place outside of the State of Colorado.

Defendants further object for the reasons as to the evidence, that the defendants are not charged as acting Directors but as duly elected and qualified directors, and that under the statute of the State of Colorado, the liability, if any, is to the Directors and Officers duly elected under the laws of the State of Colorado.

Ruling reserved at this time.

E. J. CHRISTIE—direct examination resumed by Mr. SMITH:

Q. Have you examined this book which purports to be the record and minutes of this Company, which was produced here by Counsel on the other side?

A. Yes sir.

Q. Are you able now to fix more closely the dates when you became Secretary and Treasurer.

A. Yes sir.

119 Q. Will you please do so, referring to it if you desire.

A. The 10th day of September 1902.

Q. And you have stated the time to which you continued to be Secretary before?

A. Yes sir.

Q. There is no change in that?

A. No sir.

Q. Does that volume which you hold in your hand contain the Articles of Incorporation of the Neptune Mining Co.

A. It contains a copy.

Q. Was it a copy that was inserted under your supervision?

A. Yes sir.

The Plaintiff offers in evidence the 5th paragraph of the Articles of Incorporation found in the book of records now in Court, referred to by the witness.

Plaintiff offers in evidence the Articles of Incorporation of the Neptune Mining Company, as found in the book *now in the book* now in court, and reads in evidence the 5th paragraph thereof.

Q. I will ask you now to turn to page 11 of that book, if you will, on this page I notice a heading "Meeting of the Board of Directors," but there does not appear to be any date; can you determine from the minutes, or do you know, precisely when that meeting was held?

A. Sometime between December 7th 1901, and May 23rd, 1902.

Q. That is as closely as you can fix that date, how do you fix that?

A. By the dates of the previous and subsequent meetings.

Q. I will ask you to read the minutes commencing at the top of page 11 and headed "Meeting of Board of Directors" and state after reading it, whether that or anything you have in mind refreshes your recollection as to the more precise date of the meeting.

A. It does not refresh my recollection in any way.

Q. You are unable to state from your own personal recollection just when that meeting took place?

120 A. I cannot, unless I had the contract, or the dates of the contract which was signed at the same meeting.

Q. Well, it does not matter, it was between those dates you gave?

A. Yes sir.

Q. Is that a correct statement of the minutes of that meeting?

A. Yes sir.

Q. A part of the official record of the minutes of the Company?

A. Yes sir.

Plaintiff now offers in evidence all of page 11 of the same book before referred to, except the top line, which comes over from a previous meeting.

To which the defendants object as incompetent, irrelevant, and immaterial, in that it purports to have been a meeting of Directors wherein the Board of Directors elected or pretended to elect Mr. Vasey as a member of the Board of Directors, which meeting purports to have been held in Iowa, and not in the State of Colorado.

Ruling reserved for the present.

Q. Will you now turn to page 13 of the same book, this is also a portion of this same book of records?

A. Yes sir.

Plaintiff offers in evidence the resignations and appointments of various officers of the Neptune Mining Co. as found on page 13 of the Book of Records.

To which the defendants object for the same reasons as last interposed.

The ruling reserved for the present.

Plaintiff now offers in evidence the record of the meeting of the Board of Directors found on page 15, of the book of record, commencing near the top of page 15 with the words; "Meeting of the Board of Directors."

To which the defendants object for the same reasons as last interposed.

Ruling reserved for the present.

Q. I call your attention to page 35 which seems to be the last of any minutes in that book, and I ask you to inspect that page and state whether or not this contains all of the minutes of the meetings of your Board of Directors?

A. It does not.

Q. Where are the minutes of other meetings, if you know, and in what form were they made or preserved?

121 A. I don't know where they are today, but they were made upon separate sheets of paper, and typewritten.

Q. Did you ever have them in your possession?

A. I had at the time they were made, and until the 27th day of May 1903, on which date I gave them, and also this book, to Mr. E. E. Stoehr, in company with Albert Vasey.

Q. Where was that?

A. The exchange was made on the street-car platform as the car was just leaving the town of Marion, Iowa.

Q. They are two of the gentlemen named as defendants in this suit are they?

A. Yes sir, that is the last I have seen or know anything concerning those papers, or their whereabouts.

Q. I will ask you if you remember whether those further typewritten minutes which you had, contained the matter of which I tendered you a printed copy this morning?

A. Yes sir, they did.

Q. I now ask you to examine three sheets of typewritten matter, (The same marked Plaintiff's Exhibit No. 22) and ask you to state to the Court whether they are carbons or copies of the minutes which this book does not contain?

A. Plaintiff's Exhibit No. 22 is a carbon duplicate of the minutes of the meeting of the Board of Directors April 7th, 1903.

EXHIBIT No. 22.

The Plaintiff offers in evidence the paper marked Plaintiff's Exhibit No. 22, referred to by witness.

To which the defendants object as incompetent, irrelevant, and immaterial, as not constituting any valid or legal record of a meeting of the Board of Directors of the Neptune Mining Co. in that it does not show that a majority of the members of the Board of Directors were present, and does not show where the meeting was held, and it is an unsigned paper, and in no manner binding upon these defendants; and it shows by its date, April 7th, 1903, that it was after the default alleged in the petition or complaint, and it is not alleged that any debts were contracted by the Neptune Mining Co., in the complaint, after March 1903.

122 And defendant further objects that it does not appear to have been a Directors' meeting as shown by this memorandum.

The same ruling reserved for the present.

Exhibit No. 22 read in evidence by Mr. Smith.

Q. Where was that meeting held, if you know?

A. Either at the Columbia Hotel in Grundy Center or at the Delavan Hotel in Cedar Rapids.

Q. Don't you recollect which it was?

A. I am inclined to believe it was at the Delavan Hotel in Cedar Rapids, I may be mistaken.

Q. Do you remember who were present.

A. I couldn't state that at present, but the various parties named in the document were, I think all but one present at that meeting.

Q. I hand you Plaintiff's Exhibit No. 23 and ask you, excluding any matter written on the paper, to state if you know for what that paper was prepared, its history and character.

Objected to by the defendants as incompetent, irrelevant, immaterial, and not shown to have been prepared by any of the defendants in this case, or to have been brought to their knowledge in any manner or form.

Ruling reserved for the present.

A. Yes sir.

Q. What about it, what is it?

A. It is a printed ballot.

Q. Who, if you know, caused them to be printed and prepared?

A. W. I. Alexander.

Q. One of the defendants in this case?

A. I don't know whether he is or not, he is a non-resident of the state.

Q. For what purpose, do you know, was it prepared and printed?

A. To use as a ballot at a particular meeting held in Grundy Center, Iowa, November 5th, 1902.

Q. Do you know where the minutes of that meeting are?

A. Right here before me, on page 35 of the minute Book.

123 No, I beg your pardon, I don't know where the minutes of that meeting are.

Q. Were ballots similar to this, as to the printed matter, used in elections in meeting of the Board of Directors?

Objected to by the defendants as incompetent, irrelevant, and immaterial.

The ruling reserved.

A. Yes sir.

PLAINTIFF'S EXHIBIT NO. 23.

The plaintiff offers in evidence Plaintiff's Exhibit No. 23.

To which the defendants object as incompetent, irrelevant immaterial as not showing that it was the election of Directors by the stockholders, or at a regular stockholders' meeting of the Neptune Mining Co., or that it was used at any other stockholders' meeting held in accordance with the statutes of the State of Colorado, or at a meeting of the Board of Directors, and further that it does not appear to have been a meeting of the stockholders for the election of officers, as provided by the statutes of the State of Colorado, or as provided by the articles of incorporation or the By-laws of the

Neptune Mining Co. And further it does not purport to be any paper or record connected with the Neptune Mining Co.

Ruling reserved at this time.

Q. Did the Neptune Mining Co., file its annual report for the year 1903, with the Secretary of State.

Objected to by the defendants as incompetent, irrelevant and immaterial and as not the best evidence. If the annual report was filed when the record of the report is the best evidence of it.

Ruling reserved.

A. I don't know of such report having been filed.

Q. You, as Secretary did not prepare or verify any such report.

Defendants make the same objection as last interposed.

Ruling reserved.

A. I did not.

Q. Or file one?

Defendants make the same objection as last interposed.

Ruling reserved.

A. I did not.

Q. Or anything that purported to be a report.

Defendants make the same objection as last interposed.

Ruling reserved.

124 A. No sir.

Cross-examination by Mr. JAMISON:

Q. Do you know where Mr. Smith got this paper Exhibit No. 23?

A. I gave it to him myself, either personally or sent it to him through the mail, while he was acting as my attorney and also as attorney for the Neptune Mining Co.

Q. At what point was here then?

A. Denver.

Q. Whose handwriting is that of the written portion of Exhibit No. 23

A. My own.

Q. That is your handwriting.

A. Yes sir.

Q. That was giving him the addresses, was it, the post office addresses of the Directors?

A. Yes sir.

Q. Do you know about when you gave him this Exhibit No. 23?

A. I don't remember the particular date, but it was early in the year of 1903.

Q. Did you make the entries, the written portion of this before delivering it to Mr. Smith?

A. I did, I believe I did before I delivered it to Mr. Smith.

Q. And you think it was in the early part of 1903, do you know where Mr. Smith obtained this Plaintiff's Exhibit No. 22?

A. I gave it to him as my attorney at the time.

Q. About the time of this meeting, do you mean?

A. Shortly after the meeting of April 7th, 1903, as near as I can remember the dates.

Q. Was this a record or memorandum of any Directors' meeting?

A. It is a carbon duplicate or carbon copy which ever you wish to call it.

Q. Of the proceedings of these parties that were here in Cedar Rapids?

A. Yes sir, I believe so, whether it was a regularly called
125 meeting or not I could not say.

Q. And you could not say whether a majority of the Board of Directors were present.

A. I could not say.

Q. Was there ever an election held, to your knowledge, of the Board of Directors, by the stockholders of the Neptune Mining Co., in the State of Colorado.

A. I positively know the stockholders never held any election of Directors, or any meeting of any kind, in the State of Colorado.

Q. The minutes of the meetings there, or purported record, are a record of whatever was transacted or was done in Iowa.

A. Yes, sir, at Grundy Center or Cedar Rapids, as specified in the minutes.

Q. After the election of the officers, as specified in the Articles of Incorporation, no other officers were ever elected by the Board of Directors, at any regular stockholders' meeting or called stockholders' meeting, in the State of Colorado as I understand?

A. Not in the State of Colorado, no sir.

By the COURT: Was Mr. Christie ever served with summons?

A. I was served with summons during the month of October 1904.

Redirect examination by Mr. SMITH:

Q. Was it on the occasion of my visit to Cedar Rapids, after this suit had been brought, that you gave me these two papers?

A. I mailed you two, I may have given you two afterwards, I am positive I mailed you two, at different times, and I believe I gave you some papers when you were here on your visit to Cedar Rapids, whatever the date was, whether those are the ones you received out there I don't know.

Q. The suits in which I was the attorney for the Neptune Company had *not* concern with this matter at all, did they, the suits at
Canon City, the injunction suits, they had nothing to do
126 with this suit.

A. I would say not, at least the subject of the suits was vastly different.

L. J. ROWELL, called by plaintiff, sworn and examined; testified as follows:

Direct examination by Mr. SMITH:

Q. You reside at Tipton?

A. Yes sir.

By the Court: Are you one of these defendants?

A. Yes sir.

Q. Did you reside in Tipton Iowa in September 1903?

A. Yes sir.

Q. You are one of the defendants in this suit?

A. Yes sir.

Q. Do you recollect receiving a letter from me under date of September 3rd, 1903, from Denver Colorado, with reference to the suits then pending against the Neptune Mining Company?

A. No sir.

Q. I hand you this paper and ask you to look at that and say if it refreshes your recollection any about that matter?

A. No sir, it does not; I received a personal letter from you in reply to something I had written you about some personal matters but I never remember seeing a letter of that kind.

Plaintiff offers in evidence the first answer which was filed in this case.

To which the defendants object as incompetent, irrelevant and immaterial, and not admissible as an admission of the defendants nor is it binding upon the defendants, because it has been withdrawn by the fact that there was an amended and substituted complaint filed in behalf of the plaintiff, and an amended and substituted answer filed by the defendants, and that the answer, at the time the answer was prepared and filed the counsel who prepared it was not fully advised in the facts, other counsel being in the case who knew more about the facts, and no defendants *was* present at the time when it was signed, nor was it signed by any of the defendants.

Ruling reserved.

127 Plaintiff offers in evidence Plaintiff's Exhibits Nos. 24 to 30 inclusive.

To which the defendants separately and jointly object as incompetent, irrelevant, and immaterial, as not binding upon the defendants; that the said letters purport to be the personal letters of E. E. Stoehr, written to some of the plaintiffs in Colorado regarding the affairs of the Neptune Mining Co., and they are personal matters, and are in no manner admissions of Mr. Stoehr in behalf of the Company or as an officer of the company or any liability, and because they are foreign to any issues in this case, and does not tend to prove any issue in this case.

Plaintiff rests.

The Testimony for Defendants.

Arland Lough, called by defendants, sworn and examined, testified as follows:

Direct examination by Mr. Jamison:

Q. Where do you live?

A. At Estherville, Iowa.

Q. How long have you lived at Estherville?

A. A little over twenty years.
Q. What is your business?
A. Letter carrier.
Q. What distance is it from Estherville, Iowa, to Cedar Rapids?
A. Two hundred and seven and two thirds miles.
Q. That is Two Hundred and eight miles to attend court?
A. Yes sir.
Q. State whether you recollect going to Colorado, and to West Cliffe or Silver Cliff, in August of 1903.
A. Yes sir, I do.
Q. What time did you leave Iowa for Colorado?
A. August 3rd, 1903.
Q. And you arrived there what date?
A. August 5th.
128 Q. Arrived at West Cliffe?
A. Yes sir.
Q. What railroad did you go over?
A. I went over the Rock Island System?
Q. Did that carry you through the City of Denver?
A. I did not go to Denver, I went from Lima to Colorado Springs and then to Puebla.
Q. And over the Rio Grande to this point?
A. Yes sir.
Q. Were you a stockholder at the time you left Iowa, on August 3rd, 1903 of the Neptune Mining Company?

Objected to by the plaintiff on the ground that the answer itself shows that prior to the service in this case, Mr. Lough was a stockholder in this Company; and further as calling for a conclusion of the witness.
The question withdrawn.

Q. What did you do with the stock you had in the Neptune Mining Co.?
A. I surrendered it and received stock in the Bull Domingo Mining Co.

Objected to by the plaintiff as the laws of Colorado do not recognize, but forbid any transfer of shares of stock in any corporation other than by registering such transfer on the books of the Company, any other transfer or any other form is declared to be void.
Ruling reserved.

Q. Look at the letter and envelope shown you and state whether or not that is the letter and envelope containing the same, which you wrote surrendering your stock?
A. It is.

DEFENDANTS' EXHIBIT "A."

The defendants now offers in evidence the letter and envelope referred to, which is marked Defendants' Exhibit "A."

To which the plaintiff objects as incompetent, irrelevant and immaterial.

Ruling reserved.

Q. What did you do with the stock that you had in the Neptune Mining Company.

It is agreed between the parties that this testimony may be
129 taken subject to the objection of the plaintiff as heretofore made, without repetition.

Ruling reserved.

A. I sent it to John T. Christie.

Q. Did you assign it in any way?

A. Yes sir.

Q. Did you sign it over?

A. Yes sir.

Q. State to the Court whether you ever had it in your possession or had anything to do with it after that time?

A. No sir, I did not.

Q. Did you receive a certificate in the other mine referred to in your letter, the New Bull Domingo?

A. Yes sir.

Q. In exchange.

A. Yes sir.

Q. When you went out to Colorado, had you any knowledge that any papers were to be served upon you?

A. No sir.

Q. When was the first knowledge that you had of any papers to be served upon you?

A. The day they were served.

Q. What time did you arrive in Silver Cliff or West Cliffe, on the 5th day of August?

A. In the evening of the 5th day of August.

Q. Do you remember what time the train got in there?

A. Well, it was dark.

Q. What time the next day were you served, as you say, with the papers?

A. I don't remember the time.

Q. Was there any person there at the time, that said anything to you about it?

A. Before they were served Mr. Zumut told me they were
130 going to be served.

Q. At the time the Sheriff served the papers on you, did you say anything?

A. Yes sir.

Q. What did you say?

Objected to by the plaintiff as immaterial.
Ruling reserved.

A. I told the Sheriff I did not own any stock in the Neptune Mining Company, and wasn't any member of it nor any officer of it, and that he was serving the wrong man.

Q. What did you do with the notice or the papers that were served upon you at that time?

A. I gave them to Mr. Zmunt and told him to see there was no Judgment rendered on them, as the service was worthless.

Q. When you told the Sheriff that you held no stock in the company and was no stockholder or officer what did he say?

Objected to by the plaintiff as immaterial.
Ruling reserved.

A. He said he would serve it anyway, as I was the one pointed out to serve them on and he would serve them.

Q. Now you may state to the Court whether, at the time that you wrote the letter of July 9th, 1903, to Mr. Christie and sent him the stock, you had made any arrangements to go to Colorado or to Silver Cliff?

A. No sir.

Q. Had you at the time you sent this stock to him, assigned as you have stated, any intention of going to Colorado.

A. No sir.

Q. Did you receive the stock in exchange for this you sent to Mr. Christie?

A. Yes sir.

Q. When did you receive that?

A. On the 10th day of July.

Q. When was it that you concluded to go to Colorado, about what time?

A. The latter part of July.

131 Q. Did you see anyone, or have any talk with anyone about it, and if so with whom?

A. Mr. John T. Christie.

Q. What was said about it?

A. He wanted me to go out and see the mine, that it was a beautiful trip, and wanted me to go out and see the mine.

Q. Was there anything said about paying your expenses, and if so what?

Objected to by the plaintiff as it is a conversation with outside parties.
Ruling reserved.

Q. John T. Christie is a brother of E. J. Christie, is he?

A. Yes sir.

Q. I asked you if there was anything said about your expenses out there, and if so what was said?

A. He said that my expenses would be paid out of the price of the stock that I had bought about that time.

Q. You had bought other stock in the New Bull Domingo Mine, had you?

A. Yes sir.
Q. How many shares?
A. Five hundred.
Q. When did you buy that, before you went out?
A. Yes sir.
Q. Was this in 1903?
A. Yes sir.
Q. And prior to the time you went to Colorado?
A. Yes sir.
Q. You may state whether your expenses were paid?
A. Yes sir, they were.
Q. By Mr. Christie?
A. Yes sir.
Q. Was it paid by Mr. John T. Christie?
A. Yes sir.

132 Cross-examination by Mr. SMITH:

Q. Where did you say you live?
A. Estherville, Iowa.
Q. How far is that from Grundy Center?
A. I don't know.
Q. Have you any idea about it?
A. No sir.
Q. You assigned this stock to John T. Christie?
A. Yes sir.
Q. Just signed it in blank?
A. Yes sir.
Q. Did you sign it the day that the letter bears date, the 9th of July 1903?
A. Yes sir.
Q. Where were you *when* you signed it?
A. At Estherville.
Q. In this state?
A. Yes sir.
Q. And you mailed it to him at what point?
A. Marion, I believe.
Q. With the request that he return you 200 shares in another company?
A. Yes sir.
Q. That is all you did?
A. Yes sir.
Q. You did not go to see him about it yourself?
A. No sir.
Q. This is the whole transaction?
A. Yes sir.
Q. You assigned the stock in blank and sent it to Mr. Christie, with the request that he return some shares to you in another company?
A. Yes sir.
Q. How long had you owned that stock?
A. Which?
Q. The first stock in the Neptune Mining Company?

A. I don't remember, not more than three or four months.
Q. To whom was that issued?
A. To myself.
Q. The certificate ran to you?
A. Yes sir.
Q. It wasn't stock you had received of somebody else and endorsed by them on the back?
A. No sir.
133 Q. It bore your name on the face, as the owner of the shares?
A. Yes sir.

E. J. CHRISTIE, called by defendants.

Direct examination by Mr. WILLIAMSON:

Q. You are the same witness who was on this stand this afternoon are you?
A. Yes sir.
Q. Are you acquainted with Mr. Lough the witness who just left the stand?
A. I have met him, yes sir.
Q. Were you acquainted with John R. Smith, the attorney for the plaintiffs in this case in 1903?
A. Yes sir.
Q. And prior thereto?
A. Some time prior thereto, yes sir.
Q. Did you have any talk with Mr. Smith with reference to sending anybody out thereto Colorado, upon whom he could get service, in actions brought or to be brought against the Neptune Mining Company in the State of Colorado?
A. Yes sir.
Q. When and where did such conversation or conversations take place?
A. I believe some of the conversations took place in Mr. Smith's office, in the McPhee Building, in Denver Colorado, and I believe some of the conversations took place also in Marion, Iowa, at my home, and I believe that some of the information was communicated by letters and telegrams.
Q. When did these conversations occur?
A. At various times during the year 1903.
Q. Was it prior to or after the 6th day of August 1903.
A. Before the 6th day of August.
Q. Now state what was said in these conversations by you and by Mr. Smith, with reference to that subject.

134 Objected to by the Plaintiff as wholly immaterial, irrelevant and incompetent.
Ruling reserved.

A. Mr. Smith, informed me that in order to bring suit against the Neptune Mining Co., he must get service either upon a Director or a stockholder, and asked me if there was any stockholders in

Colorado, he also gave me the plan of his suit, and the fact that the claims would be transferred to or assigned to some party for collection, and that after assigning to the party for collection the aggregate amount would exceed $2,000.00 and that this was for the purpose of bringing the suit in the Federal Court against the Directors personally. I further explained to Mr. Smith that there were parties who were stockholders in the Neptune Mining Company, who would be in Colorado later in the season, and if I remember correctly I wrote him a letter to the effect that Mr. Arland Lough would visit Colorado, and about the date that Mr. Lough arrived there, or the day following, or possibly the day preceding, I wired Mr. Smith to the effect that Mr. Lough would reach West Cliffe or Silver Cliffe, on a particular date mentioned in the telegram.

Q. What if anything was said by Mr. Smith to you or by you to Mr. Smith, with reference to any arrangement by which you should send some one to Colorado so that he might get service upon him?

A. I don't remember that Mr. Smith requested me to send any one there, but he asked me to give him the name of anyone who would come or who did thereafter come, and I agreed to do so, and did do so.

Q. What did you say to him, if anything, with reference to the fact that you would arrange that somebody would go out there, so that he could get service, or that you see to it.

A. I told him in plain English that I would see to it that he would get service.

Q. Was there any arrangement understanding between you and Mr. Smith, that you would see to it that a stockholder or Director should go to Colorado, so that he could get service upon him?

135 A. I agreed to do so, and I think he understood it that way, that it was an agreement between him and me that I should send a stockholder, or wire him as soon as one did come.

Q. What was said with reference to his bringing an action upon these claims in the State of Colorado, and the purpose for which such action should be brought in that state?

A. He explained the legal phase of it, which was familiar to me at the time, of assigning all the claims to one party, and suing the claims in the name of the party, or assigning and then bringing the suit in the Federal Court, which he could do if the judgment exceeded Two Thousand dollars, and which, I believe, could not be done unless the judgment did exceed Two Thousand dollars.

By the Court—What Federal Court.

A. The one at Cedar Rapids, the one in which I am now testifying.

Q. Did he state to you, or did he not, that that was the purpose of having these claims assigned to one person and reducing those claims to a judgment in the State of Colorado, that the purpose was to obtain jurisdiction in the Federal Court in Iowa?

Objected to by the Plaintiff as leading. The objection sustained. Defendant excepts.

Q. What if anything did he say with reference to the purpose for

which the claims should be so assigned to one person, so that the aggregate amount would be more than Two Thousand dollars, and reduced to a judgment in the State of Colorado?

A. He explained to me fully that the object in making the assignments was to secure a judgment in excess of Two Thousand dollars, in order that he might secure a hearing in the Federal Court at Cedar Rapids, upon that judgment, and I debated the question with him, as to whether he could or not with a less amount,—whether he could secure jurisdiction in this Court,—or whether this Court would have jurisdiction over the case if the amount was less than Two Thousand dollars.

Q. Did you understand or know about the efforts that your
136 brother, John T. Christie was making to induce Mr. Lough to go to Colorado?

Objected to by the plaintiff as incompetent, and immaterial.
The ruling reserved.

A. I knew that my brother was making an effort to send Mr. Lough to Colorado to see the Bull Domingo mine.

Q. State whether or not you talked with your brother with reference to his getting or inducing Mr. Lough to go?

A. I did, yes sir.

Objected to by the plaintiff as asking for a conversation between third parties, and in no manner identified with or binding upon the plaintiff.

The ruling reserved.

A. I did, yes sir.

Cross-examination by JOHN R. SMITH:

Q. Were not *of* the Woodside suits and the West Cliffe Hardware Co. cases all brought before we had any talk at all.

A. There was no service had upon Mr. Lough. I don't know when you filed your petition in the Court.

Q. You don't remember whether the suits were pending then or not?

A. I didn't know then and don't know now whether you had filed your petition before that time, or after that time.

Q. You simply knew I was trying to get service on these defendants?

A. Yes sir.

Q. And asked you whether there was any stockholder in Colorado, or any way to get service on a stockholder?

A. Yes sir.

Q. And you volunteered if I couldn't find a stockholder you would see if you couldn't provide a stockholder?

A. Yes sir, I agreed to send one out if possible.

Q. I did not ask you to send one out?

A. As to whether you asked me to do so, I don't remember, I don't say you did ask me to do so, but you asked me if I knew where you could get service on a stockholder, but you did afterward ask me if I would notify you when anybody came to Colorado.

137 By the COURT: Was it in pursuance of this arrangement you had out there, that you induced Mr. Lough to go there?

A. Yes sir; I didn't get him to go out, but I got my brother to get him to go out there; but my brother didn't know why I wanted him to go, or anything about it, my brother was simply wanting Mr. Lough to go out and inspect the mine, for the benefit of the New Bull Domingo Mining Co., in which Mr. Lough was then, I believe a stockholder.

Q. By Mr. SMITH: The fact is this, that your brother was trying to organize a new company to take over the wreck of the Neptune?

A. They had already taken over the Bull Domingo Mine.

Q. You mean the interests of the Neptune Company?

A. No, because in my judgment all interests of the Neptune Company had ceased entirely in the Bull Domingo Mine before my brother and Mr. Hart and Mr. Zumnt, who organized the New Bull Domingo Mining Co., took possession of the mine,—that is my judgment of when their interests entirely ceased.

Q. And your brother, in getting Mr. Lough to go out there, was acting in his own interests and in the furtherance of his own interests.

A. In furtherance of the interests of the New Bull Domingo Mine.

Q. You had had some trouble with your associates in the Neptune Mining Company before that time?

A. I believe only with one stockholder.

Q. You did not feel very kindly towards the officers of that company?

A. My feelings toward those gentlemen were feeling of forgiveness for anything which they had done, and at the same time I had no real spirit of retaliation towards them.

Q. Wasn't the conditions which surrounded your relations with them the reasons that moved you to assist in getting service in those suits then pending.

A. No sir.

138 Q. Why was it you were desirous of having service made on them then?

A. I can't say I was desirous of having service made upon them.

Q. Why did you do what you did do?

A. For reasons that were strictly personal in the matter.

Q. Personal to yourself?

A. Yes sir.

Q. That is all the explanation you desire to make about it?

A. That is all I desire to make about it.

Close of testimony for defendant.

Rebuttal Evidence.

JOHN R. SMITH, sworn and testified on behalf of plaintiff, as follows:

Direct Statement.

These two suits of the West Cliffe Hardware Company and Mr. Woodside were brought there in Custer County some considerable time before any service could be obtained. Both Mr. Sweigert and myself, acting independently, had been trying to get service upon some one, and we had made several efforts either to find an officer in the state, or to get service upon one when any officer came to Denver or any other part of the state, and had been quite diligent in trying to get service, and Mr. Christie, who had been connected with this company closely, did say to me that he would assist us in getting service, and would notify me when any stockholder came to the state, and he both wrote and telegraphed me that Mr. Lough, who he said was a registered stockholder of the company, would be in the state on such and such a date, and I instructed the Sheriff to get service on him immediately, upon his arrival, and so did Mr. Sweigert in his case, there was no arrangement of any kind as to sending Mr. Lough out, nor were we in any manner concerned in it; after the service was obtained, and in order that these gentlemen might be advised, and knowing nothing of what had been done about the summons in the case by Mr. Lough, I wrote a personal letter to such of the Directors in Iowa, as I had their addresses, on
139 the 3rd day of September 1903, stating the fact of the pendency of the suits, that it was claimed that service had been obtained, giving a list of all the indebtedness, and calling their attention to the fact that their liability as Directors might be brought into question, and to none of those letters did I ever receive any response, only hereto Mr. Stoehr.

In so far as the witness stating, if it is anything more than a statement to explain to the court, that he was in no manner engaged in any conspiracy,—or as to the statement of the contents of any letter or letters, it is objected to by the defendants as incompetent, irrelevant and immaterial and not the best evidence.

The ruling reserved.

By Mr. SMITH, continuing: On September 3rd, 1903, I mailed to Mr. W. K. Laybourn, Grundy Center Iowa; to E. E. Stoehr, of Holland, Iowa; to Henry Dirks, of Holland Iowa; to E. L. Pieper, at Fern Iowa; to L. J. Rowell, at Tipton Iowa, and to John A. Meissner, at Reinbeck, Iowa; to each of those gentlemen, in one of my stamped return envelopes, a letter of which this is a copy, dated Denver, Colorado, Sept. 3rd.

The contents of the letter is objected to by the defendants as incompetent, irrelevant and immaterial, and not tending to rebut anything in this case; as foreign to any issue in the case.

The ruling reserved.

Witness reads the letter to the Court, as follows:

DENVER, COLORADO, *Sept.* 3 '03.

L. J. Rowell, Tipton, Iowa.

DEAR SIR: Two suits are now pending against The Neptune Mining Co., in the District Court of Custer County, Colorado, one brought by the Westcliffe Hardware Co., upon the following list of claims held by or assigned to it.

140	Westcliffe Hardware Co.	$259.77
	John Shortridge	162.75
	H. D. Mills	51.00
	John Blair	25.00
	A. N. Parnell (Florence Iron Works)	21.96
	Stearns Rogers Mfg. Co.	73.92
	Mrs. F. T. Peery	108.50
	Thos. McConnell	70.00
	Wm. R. Davis	52.00
		$823.91

The other by Wm. Woodside, plaintiff, for items as follows: Wm. Woodside, $163.26; Ully Camper, 892; Gen. W. Gilmore, $783.30; S. H. Pope, $286.57; Roy Lapsley, $326.50; Jerry Starr, $120.75; The Vulcan Sheet Metal Co., $360.63; J. R. Smith, $172.50; Ernest Simmler, $407.85; H. E. Fossette, $12; $2724.46.

Judgment by default for want of answer can be taken by Sept. 10 '03. If you desire to defend these claims or any of them you should give matter prompt attention.

These creditors intend pressing their claims against you upon your statutory liability as Directors, if not otherwise satisfied.

Very truly yours,

(Signed) JOHN R. SMITH."

(Statement continued):

And the judgment was not taken for a month after that, or more; to none of those letters was any reply received in any shape or form.

111 Cross-examination by Mr. WILLOUGHBY:

Q Can you now state when your complaint was filed in the case of Woodside against the Neptune Mining Co., in the District Court of Custer County, Colorado?

A. I think I can by referring to my papers. I don't recollect it; (Witness refers to papers.) The complaint was filed, No. I don't believe I can state, no sir, but it must have been quite a while before because the assignments were obtained, some of them in January I notice.

Q Isn't it a fact that the original notice served upon Mr. Lough or summons, was placed in the hands of the Sheriff on the very day

that it was served upon Mr. Lough, to-wit the 6th day of August 1903?

A. My recollection about that is that I telegraphed down there to Mr. Sweigert, when I learned that Mr. Lough was going to be there, I was not at Silver Cliff, as I recollect, as he attended to that, whether he got an alias summons or what he did I don't know about that, but I do know that these matters had been running a long time before that.

Q. It is a fact that the returns of the Sheriff upon the summons served, shows that he received the summons for service on the 6th day of August 1903, the same day upon which sevrice was made upon Mr. Lough, that is the fact, isn't it?

A. I think so.

Defendants' Motion to Dismiss.

At the close of all the evidence, the defendants, separately and jointly move the court to dismiss this case for the reason that this Court is without jurisdiction to entertain the same, and it appear that the causes of action are owned by several persons, citizens of the State of Colorado, and that none of these causes of action claimed by the several persons who assigned to Woodside, exceed in
142 amount the value or sum of Two Thousand dollars: and because it further appears from the record that the purpose of assigning the claims to plaintiff was for collection only, and to confer jurisdiction on the Federal Courts in Iowa, and it thus appears that no real or substantial controversy is pending between the Plaintiff Woodside and the Defendants, involving Two Thousand dollars.

PLAINTIFF'S EXHIBIT No. 21.

Report of the Board of Directors of the Neptune Mining Co.

GRUNDY CENTER, IOWA, *November* 13, 1902.

The Board of Directors of the Neptune Mining Company was called to order by President Holbrook, at 8 o'clock; the following members being present; C. W. Holbrook; L. J. Rowell; W. R. Laybourn; E. E. Stoehr; E. L. Pieper; Gerd Diekhoff; Albert Vasey; Henry Dirks; and W. L. Alexander.

Reading of the previous meeting dispensed with.

Motion prevailed that Gerd Diekhoff be elected an additional member of the Board of Directors.

C. W. Holbrook was elected president; W. R. Laybourn was elected first Vice President; H. Dirks was elected second vice president; E. E. Stoehr was elected third vice president, and E. J. Christie elected secretary and treasurer.

Motion prevailed that an office of general business manager be established.

E. J. Christie was then elected business manager.

E. L. Pieper, L. J. Rowell and E. E. Stoehr appointed as executive committee.

Motion prevailed that the auditing committee consist of three.

Mr. Vasey was elected as third member of the auditing committee.

Motion prevailed that the salary of the business manager
143 be fixed at $10 per day, from the time he begins work as such officer.

Moved that the members of the executive committee be allowed their actual expenses and three dollars per day for time spent in conducting business of the company. Seconded.

Motion amended by striking out the words "three dollars per day." Seconded; amendment carried.

Motion carried.

A resolution that the books, records and accounts of the company shall be open to the inspection of the stockholders at the annual meeting of the stockholders each year was adopted.

A resolution that the secretary shall quarterly issue a report to the stockholders of the condition of the company which said report shall be attested by the committee was adopted.

A motion prevailed that a copy of the proceedings of this meeting be submitted to each stockholder. Meeting adjourned.

E. J. CHRISTIE,
Secty & Treas.

In behalf of the Board of Directors we wish to extend to E. J. Christie our sincerest thanks for the noble work he has done in behalf of the promotion of the Neptune Mining company, and individually we extend to him our sincerest regrets of his present illness and send him our wishes for speedy and complete recovery and future happiness and prosperity.

The above expression of sympathy was made by L. J. Rowell of Tipton Iowa, in behalf of the Board of Directors, and was unanimously adopted.

Published in Newspapers and spread on records of Neptune Co.

144 PLAINTIFF'S EXHIBIT No. 22.

Meeting of the Board of Directors.

APRIL 7TH 1903.

The object of the meeting which was to appoint a committee for the sale of the Bull Domingo Mine was stated by Mr. Alexander.

Moved that Major Rowell and President C. W. Holbrook be appointed a committee of two to committee with John R. Smith of Denver, and to examine all the questions of title and litigation, and then to report upon the advisability of compromise, or a continuation to a finish in the litigation. Motion seconded.

Mr. Rowell moved, that with the consent of the second, another member be put upon the committee, as he would have to be away part of the time.

Moved that with the consent of the second the name of Albert Vasey be added; motion carried.

Motion made that a committee of three be appointed for the sale of the property. Motion seconded and carried.

Mr. E. E. Stoehr was appointed as chairman of committee, and Mr. J. K. Christie and John Meissner as the other two members.

Motion made that the committee to investigate title and the question of litigation shall also have the additional authority, at whatever time they may see fit, to draw and submit written contracts, in which E. J. Christie is party of the first part, and the Neptune Mining Company party of the second part, for the purpose of extending various amounts and times for the payments which are to be made as follows:

Two Hundred Thousand dollars for the title and the One Hundred Thousand dollars for the lease. The object of the motion being for the purpose of placing the company in the most advantageous position possible, with regard to any payments which must hereafter be made. These contracts not to be binding, until approved by the Board of Directors in a regular or called meeting. Motion seconded and carried.

Mr. Christie asked to have his resignation as Business
145 Manager and Director accepted, but to retain his position as secretary and treasurer.

Moved and seconded that Mr. Christie tender his resignation as Business Manager only. Motion carried.

Moved and seconded that the resignation of Henry Dirks as Director not be accepted. Motion carried.

Moved and seconded that E. E. Stoehr shall be nominated as business manager. Carried.

Moved and seconded that John Meissner be appointed as member of Board of Directors. Carried.

Moved and seconded that the Secretary be instructed to send out a printed report in so far as the negotiation of the sale is concerned.

Moved and seconded that a committee of three be appointed and fully authorized to enter into contracts with such agents or commission brokers as they may see fit in their own judgment, for the purpose of securing the services of said agents and commission brokers in selling the stock of The Neptune Mining Company. Mr. Christie consenting to waive himself being the exclusive agent, as set out in a certain contract between E. J. Christie *this of* company, made on or about December 1901. Motion carried.

Adjourned until 1:30 P. M.

Moved and seconded that E. J. Christie and C. W. Holbrook be a committee of two to enter into negotiations with the brokers to sell the stock of The Neptune Mining Company; the two to select a third member, and E. J. Christie to act as chairman. Motion carried.

Moved and seconded that the executive committee be requested to fix the bonds of the secretary and treasurer within the next five days and further more that they be instructed to change the size and amount of this bond from time to time, according to the amount of cash handled by the said secretary and treasurer. Motion carried.

146 Moved and seconded that just as soon as the auditing committee are ready to report, then said committee together with the Secretary shall formulate such a report as they may deem best to be sent to each and every stockholder of The Neptune Mining Company. Motion carried.

Moved and seconded that the report which is issued to the stockholders by the auditing committee and secretary, shall also be published in the Grundy County Democrat at the earliest possible date. Carried.

Whereas, The Neptune Mining Company has a floating indebtedness of about Eight Thousand dollars, the secretary and treasurer E. J. Christie holding a very large block of said stock, and wishing to raise said indebtedness, submits the following proposition to any and all of the present stockholders of said company.

Proposition. E. J. Christie will sell 32,000 shares of the stock which he now holds, or he will sell any part thereof, at the specified price of 25¢ per share, and every dollar which is received under this sale shall be devoted exclusively to the purpose of paying off the present indebtedness of Eight Thousand Dollars. This proposition is to the present stockholders only.

This is done exclusively for the purpose of clearing up the floating indebtedness of the company.

The proposition is open for a period of ten days after the issue of the circular containing this offer.

Moved and seconded that Albert Vasey be third member on committee of selecting brokers. Carried.

Executive committee fixed bonds of secretary and treasurer at $10,000.00 to be prepared and executed at once.

Meeting adjourned.

147 *Certificate of Incorporation.*

Article 5. The affairs and management of our said Company is to be under the control of three (3) directors and the following named, to-wit P. W. Tourtelout; C. W. Holbrook; S. W. Stookey, are hereby selected to act as said directors and manage said affairs concerning the said Company until November 25, 1902, and the said directors are hereby given power to increase their number at any time by resolution to not exceed thirteen (13) and also to appoint such additional directors.

Record of Proceedings of the Neptune Mining Company.

Meeting of the Board of Directors.

Meeting called to order with the following officers present: President, S. W. Stokey; Vice President, C. W. Holbrook; Secretary and Treasurer, P. W. Tourtelout. The above officers constituting the Board of Directors were all present, it was moved by P. W. Tourte-

lout and seconded by C. W. Holbrook, that the price of stock be advanced to Fifty cents (50c) per share. Carried.

It was moved as a resolution by Holbrook and seconded by Tourtelout that Albert Vasey of Grundy Center, Iowa, be elected the fourth director of the Neptune Mining Company for the unexpired year. Carried.

It was moved by P. W. Tourtelout and seconded by Holbrook that E. J. Christie be constituted the sole and exclusive agent to sell Neptune Mining Stock, and to appoint sub-agents for such sale so long as his sales are sufficient to procure funds for the proper conduct of the business and that the directors be authorized and directed to sign a contract to that effect with said E. J. Christie. Carried.

The report of E. J. Christie read and placed on file to be taken up at the next meeting.

Moved and seconded that we adjourn. Carried P. W. Tourtelout.

148 *The Meeting of the Board of Directors, May* 23, 1902.

Meeting called to order with the following officers and directors present: S. W. Stookey, President; C. W. Holbrook, Vice President; P. W. Tourtelout, Secretary and Treasurer.

It was moved by Holbrook and seconded by Tourtelout that the following named persons be added to the Board of Directors.—H. Dirks, E. E. Stoehr and John A. Meissner. Motion carried unanimously.

P. W. TOURTELOUT, *Secretary.*

CEDAR RAPIDS, IOWA, *Sept.* 8, 1902.

To the Neptune Mining Company, and to G. W. Stookey, President, and to C. W. Holbrook, Vice President and E. J. Christie.

GENTLEMEN: I hereby resign my position and office as Secretary and Treasurer of the Neptune Mining Company, said resignation to take effect immediately.

Yours respectfully, P. W. TOURTELOUT.

149

CEDAR RAPIDS, IOWA, 9-10-02.

As president of the Neptune Mining Company, I hereby name and appoint E. J. Christie to act as Secretary and Treasurer of said Company, until the next regular meeting of the Directors.

S. W. STOOKEY, *President.*

To the Directors of the Neptune Mining Company:

I hereby tender my resignation as President of the Neptune Mining Company, the same to take effect immediately.

STEPHEN W. STOOKEY.

Cedar Rapids, Iowa, 9-22-02.

Meeting of the Board of Directors.

GRUNDY CENTER, IOWA. *October* 6, 1902.

Minutes of last meeting read and approved.

Resolved, That Grundy Center in the County of Grundy and the State of Iowa, shall be one of the places of meeting for the Board of Directors of the Neptune Mining Company. Resolution adopted.

Moved by Mr. Vasey and seconded by Mr. Stoehr, that the By-laws as printed be adopted as the By-Laws of the Neptune Mining Company. Motion carried.

Resolved by the Directors present, That E. H. Holt, W. R. Laybourn and W. I. Alexander be elected to the Board of Directors until the next annual meeting. Resolution adopted.

Resolved, That C. W. Holbrook now become President of the Neptune Mining Company, to fill the unexpired term of S. W. Stookey resigned. Resolution carried and adopted.

Moved and seconded that J. A. Meissner be elected as first Vice-President and Mr. E. E. Stoehr be elected as second Vice-President and Mr. Albert Vasey as third Vice President. Motion carried.

150 Moved and seconded that E. J. Christie be elected Secretary and Treasurer for the unexpired time. Motion carried.

Mr. Stoehr and Mr. Dirks appointed as a committee to audit books of Mr. Christie. Said committee to report at meeting of next Board of Directors.

Resolved that President and Secretary be authorized to enter with E. J. Christie to first; contract purchase lease, second; lease, third; contract for the purchase of title, of all said papers pertaining to Bull-Domingo Mine. Also to place in escrow with said papers the One Hundred Thousand (100,000) shares of the capital stock of the Neptune Mining Company, referred to in the contract for the sale of the title. Resolution adopted.

Moved and seconded that Section 19 of the By-Laws be amended by the following, "When an officer or director of this company shall cease to be a stock holder in this Corporation to the extent of One Hundred Thousand (100,000) shares, the office of said director of officer shall thereby become vacant and the Board of Directors shall have power to fill such vacancy until the next annual meeting.

Motion carried. Adjourned.

151 At the conclusion of arguments of Counsel, the Court took the case under advisement, and on January 2, 1906, an opinion was filed directing the dismissal of the cause at plaintiff's costs, without prejudice, for want of jurisdiction, and judgment was therefore entered accordingly; to which decision and judgment the said plaintiff duly excepted and prayed for a certificate of want of jurisdiction and for an appeal thereon to the Supreme Court of the United States.

And for as much as the foregoing matters do not fully appear of record in this cause, this Bill of Exceptions is hereby allowed, signed and sealed as of the 2nd day of January 1906. The same to include

the agreed statement of facts signed by counsel of the parties, and the Clerk will incorporate the same herein.

H. T. REED, *Judge*.

The foregoing bill of exceptions is hereby agreed to be correct this 17th day of April A. D. 1906.

WILLIAMSON & WILLOUGHBY,
JAMISON & SMYTH,
Att'ys for Defendants.

JOHN R. SMITH,
J. K. TRACY,
Att'ys for Plaintiff.

(Endorsed:) William Woodside, Plf't, *vs.* Albert Vasey *et al.*, Defts. Bill of Exceptions. Filed April 19, 1906. A. H. Van Duzee, Clerk, by J. O. Stewart, Deputy.

152 The said Agreed Statement of Facts, so filed the 19th day of April 1906, is in words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRKS, E. E. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHUELTE, L. J. ROWEL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Agreed Partial Statement of Facts.

The parties hereto, desiring to shorten the record on appeal, and for the purposes of this appeal, only, do hereby agree as to the facts as to matters alleged and not in dispute in this cause; and as to matters in dispute in this cause, there is herewith filed a bill of exceptions limited to the exceptions and evidence bearing upon the disputed matters.

It is agreed by and between the parties, plaintiff and defendants, as follows:

That the Neptune Mining Company was and is a corporation organized and existing under the laws of Colorado, organized November 27th, 1901, and doing business in Colorado during the year 1902, and until about March 1st, 1903.

That under the laws of Colorado, Act of April 6, 1901 Session Laws 1901, page 121, 125, an annual report required to be filed by all corporations with the Secretary of the State for Colorado within sixty days after the first day of January in each year, as to
153 matters designated in the statute, and that said law provides: "If any such corporation, shall fail, refuse or omit to file the annual report aforesaid, and to pay the fee prescribed therefor, within the time above prescribed, all the officers and directors of said cor-

poration shall be jointly and severally and individually liable for all the debts of such corporation, joint stock company or association that shall be contracted during the year next preceding the time when such report should by this section, have been made and filed, and until such report shall be made and filed." That no annual report was filed by or for said corporation, The Neptune Mining Company, within sixty days from and after January 1st, 1903.

That between August 1st, 1902 and March 1st, 1903, The Neptune Mining Company incurred debts in connection with the operation of the Bull Domingo Mine, in favor of the following named persons, firms, and corporations, each and all of whom were at the time said debts were contracted and at the time of the bringing of this suit, residents and citizens of the State of Colorado, in the sums stated after each name, to-wit:

Uller Camper, for labor and supplies, in the sum of	92.00
Ben W. Gilmore, for work and labor, in the sum of	783.30
S. K. Pope, for labor, in the sum of	286.57
Roy Laksley, for labor and supplies, in the sum of	336.50
Jerry Starr, for work and labor, in the sum of	120.75
The Vulcan Sheet Metal Co., a corporation organized under the laws of Colorado, and a citizen of said State, for goods, wares and merchandise, in the sum of	360.63
John R. Smith, for services rendered, in the sum of	172.50
Ernest Gilmore, for work and labor, in the sum of	407.85
H. E. Fossette, for labor, in the sum of	12.00

save and except that as to the claims of Roy Lapsley and Ernest Gimler the proofs showed the true amount to be $336.60 as to Lapsley, and $266.00 as to Gimler.

154 That during the month of June 1903 each of the said creditors assigned his or their respective claims against the Neptune Mining Co., to William Woodside, for collection only with the agreement that each of the several assignors should remain the absolute owner of his or their claims and should contribute his proportion of the expense of collection of the same including costs and attorneys' fees, and said several assignors have ever since been and now are the exclusive owners of their several claims and said William Woodside has no interest whatever in any of said claims so assigned.

That William Woodside, the plaintiff herein, brought a suit in the District Court of Custer County, Colorado, a court of record, and that on October 3rd, 1903, a judgment was entered in said court in favor of said William Woodside and against The Neptune Mining Company, based upon the said several claims above set forth, and assigned to said William Woodside, for the sum of $2724.45 principal and $152.67 interest, and costs, the exemplified record of which judgment in said court is set out as Exhibit 1, in the bill of exceptions herewith. The Validity and regularity of this judgment is not hereby admitted, the evidence with respect to service being contained in the bill of exceptions, and the defendant claiming that this judgment did not bind these defendants.

That between August 1st, 1902, and March 1st, 1903, The Nep-

tune Mining Company became indebted to certain other citizens of the State of Colorado, in the sums following their respective names, to-wit:

155	To H. F. Knuth and August Rasch, partners as The Westcliffe Hardware Co., for goods, wares and supplies, in the sum of	$259.97
	To John Shortridge, for work and labor, in the sum of	162.75
	To H. D. Mills, for work and labor, in the sum of	51.00
	To John Blair, for work and labor, in the sum of	25.00
	To A. N. Parnell, doing business under the name of The Florence Iron Works, work & labor, in sum of	21.96
	To Stearns-Rogers Manufacturing Company, a corporation organized and existing under the laws of Colorado, for goods, wares & merchandise, in sum of	73.92
	To Mrs. F. F. Perry, for boarding men, in the sum of	108.50
	To Thomas McConnell, for work and labor, in the sum of	70.00
	To William Davis, for work and labor, in the sum of	52.00

And that during the months of June and July 1903, each of said persons, firms and corporations assigned their respective claims to the firm, The Westcliffe Hardware Company for collection only, with the agreement that each of the several assignors should remain the absolute owner of his or their claims and should contribute his proportion of the expense of collecting the same including costs and attorneys fees, and said several assignors have ever since been and now are the exclusive owners of their several claims, and said William Woodside has no interest whatever in any of said claims so assigned.

And that on July 13, 1903, The Westcliffe Hardware Company brought its action against The Neptune Mining Company in the County Court of Custer County, Colorado, a court of record, and on October 3, 1903, received a judgment against The Neptune Mining Company for the sum of $862.36 based upon the said above stated claims and the assignments thereof, the exemplified record of said judgment being set out in the bill of exceptions herewith as "Exhibit 2." The fact of the entering of this judgment, only, is admitted, the force and validity thereof being in dispute. This
156 judgment in favor of The Westcliffe Hardware Company was, on November 25, 1903, assigned by The Westcliffe Hardware Company, to William Woodside, the plaintiff, by a written assignment which is set out in the bill of exceptions as "Exhibit 3."

Between August 1, 1902 and March 1, 1903, still other citizens and residents of Colorado, and who each and all continued to be residents and citizens of Colorado until, and up to the time of the bringing of this suit, did work and furnish supplies and render services for The Neptune Mining Company as follows:

The Hendrie & Bolthoff Mfg. Co.	$266.54
George B. Beardsley	48.46
Bruce Barry	54.00
Henry Gilmer	31.50
Thomas Roberts	91.00

Thomas F. Ryan	11.25
William Wadsworth	222.00
William Shellerberg	123.00
Charles N. Skivington	52.00
Frazier Lemons	364.05
H. W. Foss	643.29

That no part of said claims has been paid by The Neptune Mining Company or any one for it.

That as to The Westcliffe Hardware Company and the judgment alleged to have been obtained by it against The Neptune Mining Company, the claims and demands other than that of The Westcliffe Hardware Company itself, assigned to said Westcliffe Hardware Company and on which said judgment was based, were all assigned to the said The Westcliffe Hardware Company as a matter of convenience and for the purpose of collection only, and that nothing was paid by The Westcliffe Hardware Company for any of such claims; and that as to the different and separate claims assigned and transferred to William Woodside, and included in the judgment rendered in his favor as aforesaid, all of the claims and demands on which said judgments were based, as stated above, were assigned to him for the purpose of collection, only, and that he paid no consideration therefor. That the assignment to the said William Woodside of the judgment in favor of The Westcliffe Hardware Company, was for the purpose of collecting the same, and that the
157 said Woodside paid no consideration for such assignment.

That each of the other claimants and creditors of The Neptune Mining Company, in like manner, assigned their respective claims to Woodside, solely for the purposes of collection, and that he paid no consideration therefor.

That each of the claimants was to contribute and did contribute pro rata towards the expenses of the collection of the claims, and each has ever since owned and now owns his said claim so assigned.

The foregoing is a partial statement of the facts, to be attached to plaintiff's Bill of Exceptions.

Signed this 17th day of April A. D. 1906.

H. T. REED, *Judge.*
WILLIAMSON & WILLOUGHBY,
JAMISON & SMYTH,
Att'ys for Defendants.

JOHN R. SMITH,
S. K. TRACY,
Att'ys for Plaintiffs.

(Endorsed:) Woodside *vs.* Vasey et al. Agreed Statement of Facts. Filed April 19, 1906. A. J. Van Duzee, Clerk, by J. O. Stewart, Deputy.

158 On the 19th day of April 1906 the following certificate was signed and filed in the said cause, to-wit:

United States Circuit Court, Northern District of Iowa, Cedar Rapids Division.

No. 168.

WILLIAM WOODSIDE, Plaintiff,

vs.

ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRKS, GERD DIEKHOFF, HARM SCHUELTE, E. E. HOLT, E. L. PIEPER, L. J. ROWELL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

In this cause I hereby certify that the order of dismissal herein made, is based solely on the ground that this cause does not involve a controversy within the jurisdiction of this court, for the reasons stated in the opinion filed herein.

This certificate is made conformably to the Act of Congress of March 3, 1891, Chapter 517, and the opinion of this court filed herein is hereby made a part of the record, and will be certified and sent up as a part of the proceedings, together with this certificate.

Dated Jan'y 2d, 1906.

H. T. REED,

District Judge, Holding the Circuit Court of the United States for the Northern District of Iowa.

Approved as to contents and date.

JAMISON & SMYTH,

Att'ys for Defendants.

Filed April 19, 1906.

A. J. VAN DUZEE, *Clerk.*

By J. O. STEWART, *Deputy.*

159 And on the 21st day of December 1907, there was filed in the office of the Clerk of said Court in this cause a Petition for Writ of Error and an Assignment of Errors, which are in words and figures following, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,

vs.

ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRKS, E. E. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHULTE, L. J. ROWELL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Petition for Writ of Error to the Supreme Court of the United States.

To the Honorable H. T. Reed, one of the Judges of the said Court:

Now comes the plaintiff above named and files herewith his Assignment of Errors in the record, proceedings, and judgment herein and conceiving himself aggrieved by the decision, order and judgment of this Court, that it is without jurisdiction of this cause and by the ruling, order and decision of said Court made in the action filed by said Court in said cause, and by the order of said Court made a part of the record, and to which opinion reference is hereby made and the order of dismissal and judgment being stated in the certificate filed in this cause to have been based solely on the ground that this cause does not involve the controversy within the jurisdiction of this Court for the reasons stated in the opinion filed herein, and this Court having made this certificate conforming to the Act of Congress of March 3rd, 1891, Chapter 517, and it appearing
159 from said opinion so so certified that the question of jurisdiction arose upon the finding of the Court that the testimony conclusively shows that the plaintiff is not in fact the owner of, or the real party in interest in, any of the claims against the mining company that have been assigned to him; that the amount of his own claim against said company is only $162.36, and that the amount of none of the separate claims of the others assigned to him exceeds $650.00 while some are less than $100 but the aggregate of all amounts to $5,500.00 that said claims other than his own were assigned to plaintiff for the purpose of collection only; that he paid no consideration therefor, and that said assigned claims or demands in fact remain the property of the different assignors thereof, who are paying pro rata the expenses of prosecuting this action; that if plaintiff recovers upon said claims from the defendants, the amount of such recovery above the plaintiff's individual claim, will be for the benefit of the several assignors thereof, and will be distributed to them in proportion to the amount of the claim of each. That it also satisfactorily appeared that said several claims other than that of the plaintiff were assigned to him by the different owners thereof to be added to the amount of plaintiff's claim to create an amount in excess of $2,000.00 for the express purpose of enabling the plaintiff to sue thereon in this court. And that it also appeared that in October 1903, the plaintiff recovered judgment in the district court of

Custer County, Colorado against the Neptune Mining Company for the amount of his own claim, to-wit, $162.36 and a part of the other claims so assigned to him, such judgment being for the amount of $2724.46, and that such judgment does not change the plaintiff's right to or interest in the several claims that were so assigned to him. The recovery thereof was but one step towards the collection of said claims for the benefit of the several assignors thereof, and the court may go back of it to ascertain upon what it is founded, who are the real parties in interest therein, and the real transactions
161 between the plaintiff and said several assignors to determine whether or not the case is one of federal jurisdiction.

The contention of the plaintiff below being that the judgment recovered by him before the commencement of this action in the District Court of Custer County State of Colorado for the sum of $2724.26 constituted and was a debt on behalf of said plaintiff exceeding the sum of $2,000.00 exclusive of interest and costs, and to which the other claims assigned to him could be properly added in making up the total claims and demands of $5,499.91.

The plaintiff therefore prays for the issuance of a writ of error from this Court to the Supreme Court of the United States removing this cause and the record and judgment therein, for review in the Supreme Court of the United States upon such writ of error and there is herewith tendered a bond upon the issuance of the citation in error herein in the sum of Five Hundred dollars.

JOHN R. SMITH,
S. K. TRACY,
Attorneys for Plaintiff.

Allowed December 23, 1907.
HENRY T. REED, *Judge.*

(Endorsed:) No. 168. William Woodside *vs.* Albert Vasey *et al.* Petition for Writ of Error to Supreme Court of the United States. Filed Dec. 21, 1907. A. J. Van Duzee, Clerk, by J. O. Stewart, Deputy.

162 In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIEKS, E. E. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHUELTE, L. J. ROWEL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Assignment of Errors.

Now comes said plaintiff and saith that in the record, judgment and proceedings in this cause there is manifest error in this:

First. The Court erred, upon the pleadings and proofs in this cause, in holding that it was without jurisdiction of the action.

Second. The Court erred in dismissing the said suit for want of jurisdiction.

Third. The Court erred in holding that the judgment recovered in the District Court of Custer County, Colorado, against The Neptune Mining Company, was not itself a debt and could not be counted upon as a distinct cause of action, and that the Court could go back of said Colorado judgment, to ascertain upon what it was founded and who were the real parties in interest therein, to determine whether or not the case was one of Federal jurisdiction.

Fourth. The Court erred in not rendering judgment for the plaintiff.

JOHN R. SMITH,
S. K. TRACY,
Attorneys for Plaintiff.

(Endorsed:) No. 168. Assignment of Errors. Filed December 21, 1907. A. J. Van Duzee, Clerk, by J. O. Stewart, Deputy.

163 And on the 28th day of December 1907 the following Bond on Appeal was filed in the office of the Clerk of said Court, to-wit:

In the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY, W. R. LAYBOURN, E. E. STOCKR, HENRY DIRKS, E. E. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHUELTE, L. J. ROWEL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

Bond on Appeal.

Know all men by these presents: That we, William Woodside, as principal, and The National Surety Co., a corporation, having its principal place of business in the City of New York, in the State of New York, as surety, are held and firmly bound unto the above named, Albert Vasey, W. R. Laybourn, E. E. Stockr, Henry Dirks, E. E. Holt, E. L. Pieper, Gerd Diekhoff, Harm Schuelte, L. J. Rowel, John A. Meissner, and E. J. Christie, in the penal sum of five hundred dollars, to be paid to the said parties; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty fourth day of December A. D. one thousand nine hundred and seven.

Whereas the above named William Woodside has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by the judge of the Circuit Court of the United States for the Northern District of Iowa, Cedar Rapids Division;

164 Now therefore, the condition of this obligation is such that if the above named William Woodside, shall prosecute said appeal to effect and answer all damages and costs if it shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WILLIAM WOODSIDE,
By JOHN R. SMITH,
His Attorney of Record.
NATIONAL SURETY COMPANY,
CHARLES S. CRAM,
Resident Vice President.
ALFRED L. FRASER,
Resident Assistant Secretary.

[Seal of National Surety Company.]

STATE OF ILLINOIS,
County of Cook, ss:

I, B. A. Galligan, a Notary Public of Cook County, in the State of Illinois, do hereby certify that Charles S. Cram Resident Vice President, and Alfred L. Fraser, Resident Assistant Secretary, of National Surety Company who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed sealed and delivered said instrument, for and on behalf of National Surety Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal at my office in the City of Chicago in said County, this 28th day of December A. D. 1907.

[SEAL.] B. A. GALLIGAN,
Notary Public.

Approved and accepted December 28th, 1907.

HENRY T. REED, *Judge.*

(Endorsed:) In Circuit Court of United States, Northern District of Iowa, Cedar Rapids Division. William Woodside, plaintiff, *vs.* Albert Vasey, defendants. Bond for appeal. Filed Dec. 28, 1907. A. J. Van Duzee, Clerk.

165 And on the 23rd day of December 1907 the following order was entered of record as appears on page 66 of Record No. 2 of said Court to-wit:

No. 168. Law.

WILLIAM WOODSIDE, Plaintiff,
vs.
ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, HENRY DIRKS, E. E. HOLT, E. L. PIEPER, GERD DIEKHOFF, HARM SCHUELTE, L. J. ROWEL, JOHN A. MEISSNER, and E. J. CHRISTIE, Defendants.

And now on this 23rd day of December A. D. 1907, upon the motion of John R. Smith, and S. K. Tracy, Attorneys for plaintiff, and upon filing a petition for writ of error and an assignment of errors, it is

Ordered that a Writ of Error be, and is hereby allowed plaintiff to have reviewed in the United States Supreme Court, the judgment heretofore rendered herein against plaintiff, and in favor of the defendants, and plaintiff is required to file approved bond on said writ of error in the sum of $500, to cover costs in the United States Supreme Court.

166 UNITED STATES OF AMERICA,
Northern District of Iowa, ss:

I, A. J. Van Duzee, Clerk of the Circuit Court of the United States, in and for the Northern District of Iowa, do hereby certify and return that the Writ of Error which is hereto attached was served and filed in my office at Cedar Rapids, Iowa, on the 28th day of December A. D. 1907, and a copy thereof at the same time lodged in my office, and I now return the said Writ of Error, and annexed thereto and hereto attached, an authenticated copy of the record in the cause mentioned in said Writ of Error, and the Citation and proof of service thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at my office in said District this 11th day of January A. D. 1908.

[Seal Circuit Court U. S., Northern District of Iowa.]

A. J. VAN DUZEE,
Clerk United States Circuit Court,
Northern District of Iowa.

167 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Circuit Court of the United States, for the Cedar Rapids Division of the Northern Judicial District of Iowa, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, at the —— Term, 189 , thereof, between William Woodside, plaintiff, and Albert Vasey, W. R. Laybourn, E. E. Stoehr, Henry Dirks, E. E. Holt, E. L. Pieper, Gerd Diekhoff, Harm Schuelte, L.

J. Rowell, John A. Meissner and E. J. Christie, defendants, a manifest error hath happened, to the great damage of the said William Woodside, plaintiff, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid, at the City of Washington, and filed in the office of the Clerk of the Supreme Court of the United States, on or before the 27th day of January 1908, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28th day of December, in the year of our Lord one thousand nine hundred and seven.

Issued at office in the City of Cedar Rapids, with the seal of the Circuit Court of the United States for the Cedar Rapids Division of the Northern District of Iowa, dated as aforesaid.

A. J. VAN DUZEE,
Clerk Circuit Court United States, Cedar Rapids, Division of the Northern District of Iowa.
By ——— ———, *Deputy.*

Allowed by
——— ———, *Judge.*

168 [Endorsed:] No. —. United States Circuit Court, Cedar Rapids, Division of the Northern District of Iowa. William Woodside *vs.* Albert Vasey *et al.* Writ of Error. To the Circuit Court of the United States for the Cedar Rapids Division of the Northern Judicial District of Iowa. Filed 28" day of Dece., 1907. A. J. Van Duzee, Clerk.

169 THE UNITED STATES OF AMERICA:

To Albert Vasey, W. R. Laybourn, E. E. Stochr, Henry Dirks, E. E. Holt, E. L. Pieper, Gerd Diekhoff, Harm Schuelte, L. J. Rowell, John A. Meissner, and E. J. Christie, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the Circuit Court of the United States for the Cedar Rapids Division of the Northern District of Iowa, wherein William Woodside is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ

of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Henry T. Reed, Judge of the Circuit Court of the United States for the Northern District of Iowa, this 28th day of December in the year of our Lord one thousand nine hundred and seven.

[Seal Circuit Court U. S. Northern District of Iowa.]

HENRY T. REED,
United States Judge for the Northern District of Iowa.

170 [Endorsed:] No. 168 Law. United States Circuit Court, Cedar Rapids Division of the Northern District of Iowa. William Woodside *vs.* Albert Vasey *et als.* Citation. Filed 6th day of Jan'y, 1908. A. J. Van Duzee, Clerk, by J. O. Stewart, Dep'y.

The within Citation came into my hands for service on the 31st day of December, 1907, and I certify and return that I personally served the same on the within named E. J. Christie, at Marion township, Linn county, Iowa, on the 31st day of Dec, 1907. On L. J. Rowell at Tipton, Cedar County, Iowa, on the 1st day of Jan. 1908. On W. R. Labourn and E. L. Piper at Palmero township, Grundy Co., Iowa, Jan. 2d, 1908. On Albert Veasy and Harm Schulte at Lincoln township, Grundy County, Iowa, on the 2d day of January, 1908. On Gerd Diekhoff at Beaver township, Grundy County, Iowa, Jan. 2d, 1908. On John A. Meissner at Reinbeck, Grundy County, Iowa, Jan'd 2d, 1908. On E. E. Stocher, and Henry Dirks at Colfax township, Grundy County, Iowa, Jan. 2d, 1908, by reading the same to each of the within named defendants and delivering to each a true copy of the same at times and places aforesaid. E. H. Holt not being found in this district service was made on William Smyth, his attorney in fact, by delivering to him a true copy of the same for said defendant Holt, at Cedar Rapids, Linn county, Iowa, Jan. 3d, 1908.

EDWARD KNOTT,
U. S. Marshal,
By M. L. HEALY, *Deputy.*

Fees & expenses, $35.53.

171 UNITED STATES OF AMERICA,
Northern District of Iowa ss:

I, A. J. Van Duzee, Clerk of the Circuit Court of the United States in and for the Northern District of Iowa, do hereby certify that the foregoing is a full, true and perfect transcript of the record and proceedings in the case of William Woodside, Plaintiff *vs.* Albert Vasey, W. R. Laybourn, E. E. Stochr, Henry Dirks, E. E. Holt, E. L. Pieper, Gerd Diekhoff, Harm Schuelte, L. J. Rowell, John A. Meissner, and E. J. Christie, Defendants No. 168 Law, as fully as the same remain on file and of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Court at my office in said District this 11th day of January A. D. 1908.

[Seal Circuit Court U. S. Northern District of Iowa.]

A. J. VAN DUZEE,
Clerk United States Circuit Court,
Northern District of Iowa.

Endorsed on cover: File No. 20,979. N. Iowa C. C. U. S. Term No. 252. William Woodside, plaintiff in error, *vs.* Albert Vasey, W. R. Laybourn, E. E. Stoehr, *et al.* Filed January 17th, 1908. File No. 20,979.

Brief and Argument of Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 56.

WILLIAM WOODSIDE, PLAINTIFF IN ERROR,

vs.

ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, *ET AL.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

Case Reported Below as Woodside vs. Vasey, 143 Fed., 167.

JOHN R. SMITH,
HARTLEY B. WOODS,
Attorneys for Plaintiff in Error.
Denver, Colorado.

(20,979.)

(20,979.)

Supreme Court of the United States

OCTOBER TERM, 1908.

No. 252.

WILLIAM WOODSIDE, PLAINTIFF IN ERROR,

vs.

ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, *ET AL.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

Case Reported Below as Woodside vs. Vasey, 142 Fed., 167.

STATEMENT OF FACTS.

This case comes to this court on a certificate of want of jurisdiction (Abstract, page 102), the court certifying that the order of dismissal was based solely on the ground that this cause does not involve a controversy within the jurisdiction of the court, for the reasons stated in the opinion filed herein. The opinion is set out at page 55 of the Abstract. The question

presented by the record is whether a number of men, having claims against a mining corporation, no one of which amounts to $2,000, may assign their claims to one of their number for collection, to an amount in excess of $2,000, and, having obtained a judgment in the courts of Colorado in excess of $2,000, other claims and judgments, each for less than $2,000, may be assigned to the same plaintiff, so that he may lawfully maintain a suit in a Federal court in the State of Iowa against the members of the Board of Directors of the corporation, the point at issue being solely the amount in controversy, as giving jurisdiction, and no question of diversity of citizenship, or other jurisdictional questions, being involved.

There is no dispute about the facts in this case. The Neptune Mining Company was a corporation organized under the laws of Colorado. Its thirteen directors were, with one exception, residents and citizens of Iowa, the other director being a resident of Missouri. The corporation obtained a lease of a mine in Colorado, and operated it during the year 1902 and until about March 1, 1903, incurring debts in connection therewith in favor of a large number of citizens of Colorado, aggregating about $5,500, and then ceased work, leaving its debts unpaid. The corporation failed to file the annual report required by law with the Secretary of State for Colorado, (Abstract, page 98) which made the officers and directors personally liable for the debts accruing within the statutory period, and in June, 1903, several of the men assigned their claims to William Woodside, the plaintiff in error, the largest claim assigned being $783.30, and the smallest $12.00, the claims assigned, together with Mr. Woodside's personal claim of $162.36, amounting to $2,724.46, not including interest or costs. Upon these claims, his own and those assigned to him for collection, Woodside brought a suit in the District Court of Custer County, Colorado, a court of record, and on October 3, 1903, obtained judgment against the Neptune Mining Company for the sum of $2,724.45, principal, and $152.67, interest and costs, an exemplified record of that judgment being set out in full as Exhibit No. 1, pages 60 and 62 of the printed Abstract. The record shows personal service on a stockholder of the defendant, as

to each of the judgments obtained in the time, manner and form required by the laws of Colorado.

Between August 1, 1902, and March 1, 1903, the corporation had become indebted to other citizens of Colorado (Abstract, page 100), in sums ranging from $21.96 to $259.97. These claimants assigned their claims to the Westcliffe Hardware Company for collection, and on July 13, 1903, the Westcliffe Hardware Company sued the Neptune Mining Company in the County Court of Custer County, Colorado, a court of record, and on October 3, 1903, recovered judgment for the sum of $862.36, an exemplified record of said judgment being set out in the printed abstract, at pages 62 and 68, inclusive. This judgment was, on November 25, 1903, assigned by the Westcliffe Hardware Company to William Woodside, plaintiff, by a written assignment.

Between August 1, 1902, and March 1, 1903, still other citizens of Colorado did work and furnished supplies and rendered services for the Neptune Mining Company, in amounts ranging from $11.25 to $643.29 (Abstract, page 100), aggregating $1,907.09, the several claimants then assigning their respective claims in writing to Mr. Woodside. It is admitted that all of these claims were assigned by the original holders, both prior to the judgments and afterward, for collection only.

After the recovery by the plaintiff Woodside of his judgment for $2,724.45, and by the Westcliffe Hardware Company of its judgment for $862.36, and its assignment, and after the assignment to him of the claims which had not been put in suit, Woodside brought this suit in the Federal Court in Iowa, setting up as his cause of action the facts with respect to the organization of the company, the directorship of the defendants, their duties under the laws of Colorado, their failure to perform them and the consequent liability, the indebtedness to himself in his own right and as the assignee of the other claimants, and the prior recovery by him of the judgment in the District Court of Custer County, Colorado, for $2,724.45, and interest and costs, the recovery of the judgment by the Westcliffe Hardware Company and the assignment of that judgment to him, and the assignment of the claims not sued upon

in Colorado, the whole of said claims aggregating the amount sued for, $5,499.91. An answer was filed and trial had to the court without a jury and the court being of the opinion that none of the claims having originally amounted to $2,000, and they having been assigned to Woodside for collection only, he was not the owner of the claims, nor the real party in interest, and that as to the judgment for $2,724.45, it did not change the plaintiff's right to or interest in the several claims that were so assigned to him, and upon which the judgment rested, and that the court might go back of the judgment to ascertain upon what it was founded, who were the real parties in interest therein, and the real transaction between the plaintiff and said several assignors, in order to determine whether or not the case was one of federal jurisdiction. The court also held, that the judgment for $2,724.45 was obtained for the purpose of suing thereon in the Federal Court.

This view of the court, as to the law, and its ruling in pursuance thereof, is assigned for error, and presents the only question in this case. Our contention is that under a long and well settled line of authorities in the Federal Courts, this ruling is wrong, and that even if there had been no judgment in a state court exceeding the sum of $2,000, in favor of the plaintiff, the court would have had jurisdiction by reason of the aggregate amount sued for being more than $2,000, and that where, as in this case, a large number of the claims, amounting to more than $2,000, had been, in fact, reduced to a valid judgment in favor of the plaintiff and against the corporation, that judgment became and was of itself a debt of the corporation, a new and independent cause of action, upon which the plaintiff Woodside had a right to sue, as an existing and complete liability for an amount sufficient of itself to confer jurisdiction upon the Federal Court, and that the minor claims for lesser amounts assigned to him, could properly be added to and included in the suit.

The statement of facts by the court in its opinion, omitting the court's discussion of the law, is as follows: (Abstract, page 55.)

"REED, *District Judge.*

"A jury is waived in writing and the cause is submitted to the court.

"The testimony conclusively shows that the plaintiff is not in fact the owner of, or the real party in interest in, any of the claims against the mining company that have been assigned to him; that the amount of his own claim against said company is only $162.36, and that the amount of none of the separate claims of the others assigned to him exceeds $650.00, while some are less than $100, but the aggregate of all amounts to $5,500; that said claims other than his own, were assigned to plaintiff for the purpose of collection only; that he paid no consideration therefor, and that said assigned claims or demands in fact remain the property of the different assignors thereof, who are paying pro rata the expenses of prosecuting this action; that if plaintiff recovers upon said claims from the defendants, the amount of such recovery above the plaintiff's individual claim, will be for the benefit of the several assignors thereof, and will be distributed to them in proportion to the amount of the claim of each. It also satisfactorily appears that said several claims other than that of the plaintiff, were assigned to him by the different owners thereof to be added to the amount of plaintiff's claim to create an amount in excess of $2,000 for the express purpose of enabling the plaintiff to sue thereon in this court.

"It also appears that in October, 1903, the plaintiff recovered judgment in the District Court of Custer County, Colorado, against the Neptune Mining Company for the amount of his own claim, to-wit, $162.36, and a part of the other claims so assigned to him, such judgment being for the amount of $2,724.46.

"Such judgment does not change the plaintiff's right to or interest in, the several claims that were

so assigned to him. The recovery thereof was but one step toward the collection of said claims for the benefit of the several assignors thereof, and the court may go back of it to ascertain upon what it is founded, who are the real parties in interest therein, and the real transaction between the plaintiff and said several assignors, to determine whether or not the case is one of Federal jurisdiction."

Woodside vs. Vasey, 142 Fed., 617.

This statement by the court was preliminary to and a part of his ruling on the motion to dismiss, the discussion of the law by the court and the citation of authorities following herein in the next subdivision. Thereupon the motion by the defendants to dismiss the action and for judgment in favor of the defendants was sustained and judgment entered, and on application of the plaintiff below and at the same term the certificate as to question of jurisdiction was made by the judge of that court (Abstract of Record, page 102), upon which the cause came to this court, on appeal and exceptions duly allowed, and a transcript of the entire record has been filed in this court.

The statute of the State of Colorado under which the liability here sought to be enforced arose, is found in Session Laws Colorado, 1901, pages 121-125, and is as follows:

"Section 11. Every corporation, joint stock company or association, incorporated by or under any general or special law of this state, or by any general or special law of any foreign state or kingdom, or of any state or territory of the United States, beyond the limits of this state, shall, within sixty days next after the first day of January in each year, commencing with the year 1902, make and file an annual report in the office of the Secretary of State, showing:

"First—The names of its officers and their several places of residence, together with the street or business address of such officer.

"Second—The names of its directors or trustees and their several places of residence, together with the

street or business address of such director or trustee.

"Third—The amount of its capital stock as fixed and determined by its articles of incorporation and amendments thereto.

"Fourth—The proportion of said capital stock actually paid in.

"Fifth—Setting forth how the same was paid, whether in cash, by the purchase of property, or otherwise.

"Sixth—The amount of the indebtedness of said corporation at the date of filing said report.

"Seventh—Setting forth whether or not it is engaged in the active operation of its business within the State of Colorado.

"Eighth—Such other information as will show with reasonable fullness and certainty the condition of its real and personal property, and the financial condition of such corporation, joint stock company or association at the date of filing such report.

"And if such corporation be a mining corporation, engaged in mining or mining and milling the precious metals, in addition to the requirements above set forth, such mining corporation shall also set forth:

"First—The amount of its properties within this state, and where the same are located.

"Second—Whether or not the same are held under letters patent to the United States, and if so, what amount thereof.

"Third—Whether or not the same are held by possessory rights on the public domain, setting forth the amount thereof.

"Fourth—Also stating in general terms the amount of work done thereon and improvements made thereon since the time of filing the last annual report."

* * * * * * * * *

(Then follows special requirements as to railroad and ditch companies.)

"Which report in each case shall be signed by the president, and be verified by the oath of the president and secretary of said company, under its corporate seal.

"Every such corporation, joint stock company or association shall pay to the Secretary of State, for the state as a fee for examining and filing such reports, as follows:

"All ditch or canal companies having a capital stock of fifty thousand dollars or less, one dollar.

"All corporations not for pecuniary profit, or corporations organized for religious, educational or beneolent, purposes, one dollar.

"All corporations with a capital stock of ten thousand dollars, or less, one dollar.

"All other corporations, joint stock companies or association, five dollars.

"And if any such corporation, joint stock company or association, shall fail, refuse or omit to file the annual report aforesaid, and to pay the fee prescribed therefor, within the time above prescribed, all the officers and directors of said corporation shall be jointly and severally and individually liable for all debts of such corporation, joint stock company or association that shall be contracted during the year next preceding the time when such report should by this section have been made and filed, and until such report shall be made and filed."

II.

SPECIFICATIONS OF ERROR.

The errors assigned go wholly to the holding of the court below that upon the facts found by the court there was no jurisdiction, and in not rendering judgment for plaintiff. They were (Abstract, page 104):

"*First.* The court erred, upon the pleadings and proofs in this cause, in holding that it was without jurisdiction of the action.

"*Second.* The court erred in dismissing the said suit for want of jurisdiction.

Third. The court erred in holding that the judgment recovered in the District Court of Custer County, Colorado, against the Neptune Mining Company, was not itself a debt and could not be counted upon as a distinct cause of action, and that the court could go back of said Colorado judgment, to ascertain upon what it was founded and who were the real parties in interest therein, to determine whether or not the case was one of Federal jurisdiction.

"*Fourth.* The court erred in not rendering judgment for the plaintiff."

Stating the errors claimed more specifically, they are that the court below was in error in holding that plaintiff in error was not the owner of, or the real party in interest, in any of the claims against the mining company that had been assigned to him, for the reason given by the court that the claims had been assigned to him for collection only.

That the court also erred in holding that the merger of the claims so as to obtain a judgment for more than $2,000, with the purpose of enabling plaintiff to sue in a Federal court, was ground for dismissal of the action.

Also in holding that the court could go back of the judgment to ascertain upon what it was founded and who were the real parties in interest, to determine the question of jurisdiction.

III.

THE LAW RELIED ON BY THE COURT BELOW.

The court below in its opinion (Abstract, page 56) clearly states the authorities upon which the decision was rested. They are all from this court, and no reference whatever is made

to the numerous decisions in the Circuit Court and in the Circuit Courts of Appeals, bearing directly upon this question. As a matter of convenience, and that this court may have before it in this argument full reference to the authorities controlling the court below in its decision, we here quote the entire citation and discussion of authority by that court. (Abstract, page 56). The court said:

> "Farmington vs. Pillsbury, 114 U. S., 138-146, was a suit upon municipal bonds and coupons, in which one of the questions involved was the real ownership of the coupons as affecting the jurisdiction of the Circuit Court.
>
> "The court after stating the facts, said:
>
> "It is a suit for the benefit of the owners of the bonds. They are to receive from the plaintiff one-half of the net proceeds of the case they have created by their transfer of the coupons gathered together for that purpose. The suit is their own in reality, though they have agreed that the plaintiff may retain one-half of what he collects for the use of his name and his trouble in collecting. It is true, the transaction is called a purchase in the papers that were executed, and that the plaintiff gave his note for $500 but the time for payment was put off for two years, when it was no doubt supposed the result of the suit would be known. No money was paid, and as the note was not negotiable, it is clear the parties intended to keep the control of the whole matter in their own hands, so that if the plaintiff failed to recover the money he could be released from his promise to pay. In the language of Mr. Justice Field, speaking for the court in Detroit vs. Dean, 106, U. S., 537, 541, applied to the facts of this case, the transfer of the coupons was 'a mere contrivance, a pretence, the result of a collusive arrangement to create in favor of this plaintiff' a fictitious ground of Federal jurisdiction.'

"The plaintiff's interest in, or right to the assigned claims upon which he sues in this action, is stated by him as follows:

"After stating that his own claim against the Neptune Mining Company is $162.36 he says:

" 'The assignments of the accounts to me, and of the judgment aside from my personal account, were made to me for the sole purpose of beginning suit in my name, and to thus save expenses. I have no interest in any of said claims or judgments except my individual claim. The actual ownership of the said judgment and the proceeds thereof, and the accounts and the proceeds thereof, belong to the several assignors, I am to account to them and to pay them such proceeds in case I collect them.'

"As none of the claims or demands so assigned to the plaintiff are of sufficient amount to authorize an action thereon in a court of the United States, it seems clear that this action can not be maintained in this court.

Williams vs. Nottawa, 104 U. S., 209.
Bernards Township vs. Stebbins, 109 U. S., 341.
Lake County vs. Dudley, 173 U. S., 243.
Waite vs. Santa Cruz, 184 U. S., 302-325.

"In Williams vs. Nottawa, above, it is said:

" 'Congress when it passed the act of 1875 * * * was especially careful to guard against the consequences of collusive transfers to make parties, and imposed the duty on the court, on its own motion, without waiting for the parties, to stop all further proceedings and dismiss the suit the moment anything of the kind appeared.'

"In Bernards Township vs. Stebbins, 109 U. S., 341-356, the court said:

" 'The decision in Williams vs. Nottawa, 104 U. S., 209, establishes that the Circuit Court of the United

States can not since the act of 1875, entertain a suit upon municipal bonds payable to bearer, the real owners of which have transferred them to the plaintiffs of record for the sole purpose of suing theron in the courts of the United States for the benefit of such owners, who could not have sued in their own names, either by reason of being citizens of the same state as the defendant, or *by reason of the insufficient value of their claims.*

"In Waite vs. Santa Cruz, 184 U. S., 302, the court quotes section 5 of the act of March 3, 1875 (which is not repealed by the act of 1887-8) reviews its prior decisions, and in conclusion says:

"'We adjudge that, as the plaintiff does not own the bonds or coupons in suit, but holds them for collection only, the circuit court was without jurisdiction to render judgment upon any claim or claims, whether bonds or coupons held by a single person, firm or corporation against the city and which, considered apart from the claim or claims of other owners, could not have been sued on by the real owner *or by reason of the insufficient value of their claims.*'

"This action does not therefore involve a controversy within the jurisdiction of this court, and no other question in the case need be considered.

"It is accordingly dismissed without prejudice, for want of jurisdiction, and at the plaintiff's costs."

It is not wholly clear from this whether the controlling idea in the mind of the court was the underlying fact that none of the claims originally amounted to $2,000, and that the assignment of the claims was for collection only, or because of the adding together of the claims and their merger in a judgment for the express purpose of bringing a suit on the judgment in the Federal court.

The line of cases cited, however, would indicate the latter objection as the chief one, as no reference is made to the numerous cases in the Federal courts hereafter cited, dealing with the first objection, and all adverse to the view indicated by the

court. It must be, therefore, judging from the authorities relied on, that the court considered the obtaining of a judgment in a state court, on claims assigned for collection, with the present intention of bringing a suit upon it in a Federal court, as in some sense a wrongful and fictitious proceeding. The authorities cited by the court not only do not sustain such a conclusion, but when examined are found clearly to mark the scope and purpose of the act of Congress on which they are all founded. (Sec. 5, Act of March 3, 1875) and to leave plaintiff in error, suing on his judgment, wholly free, both morally and legally, from any application of the rule established by those cases.

This is not an action directly on bonds or coupons or other choses in action transferred to the plaintiff for the purpose of making up the jurisdictional amount. The record here shows honest and wholly undisputed claims for labor and material transferred long before judgment to Mr. Woodside for collection, and the usual effort to collect by earnest request and patient waiting for a long period. Then a suit is brought in the usual course of an effort to collect, with not only the defendant personally served under the laws of Colorado, the home of the corporation, but also the individual directors, advised of the pendency of the action, and of the intention to seek to enforce their statutory liability. There was no haste in taking judgment and the fullest opportunity for defense was offered. The creditors had a right to sue and get their money as best they could, and if the defendant had possessed any property in Colorado they would doubtless have enforced their judgment against it. When obtained, their judgment was the usual judgment of record, with all the rights following any judgment, among them the right to sue upon it in any forum having jurisdiction.

It may be conceded that while the suit was pending in the state court the plaintiff, through his counsel, had in mind the bringing of this suit, as one of the legal remedies incident to the judgment, but this is very far from any wrongful use or abuse of the jurisdiction of the Federal court. There is not in this record the slightest proof that any of the original assignors had any plan or purpose about it, beyond leaving the matter

in their attorney's hands to collect their money. There was no attempt to take any snap judgment, either as to the defendant corporation or these defendants as its officers. They are not only presumed to know their duties and liabilities, but in this case they are shown to have been advised of the intention to hold them, before the original judgment was taken.

It is hard to see how counsel, if they knew their business, could have failed to have this purpose in mind, under the circumstances of this case, or how, having it, the intention would divest plaintiff of his lawful right.

We confidently ask the careful consideration by this court of the five cases relied on by the court below. In none of them was there a precedent judgment, giving to the plaintiff that definite status as the party entitled to recover, which is the chief end of the law's action. In all of them the action was directly upon the coupons and the fact of ownership was a necessary element of the cause of action.

IV.

THE LAW AS WE CLAIM IT TO BE.

Our contention is:

First. The judgments obtained in the District and County Courts of Colorado, courts of record, on valid service on the defendant corporation for $2,724.45 without interest or costs and $862.35 before the commencement of the suit, and being each debts and obligations for which the directors were liable by reason of their default, were independent debts, and a liability upon which this action would lie, and conferred jurisdiction upon the court so far as the amount in controversy was concerned.

Second. By the laws of Colorado, where these debts were contracted, the assignments made, and these judgments obtained, an assignment for collection, under the circumstances shown in this case, is an assignment in good faith, carrying all the right and title to the assignee, and he becomes and is the owner of the claim, and the real party in interest in any suit to enforce it.

Third. That by the judgments of record, proper service having been made on defendant, all questions as to the right of the plaintiff to sue upon the claims assigned to him, his title to them, and the character in which he held them, were, as against the defendant, the Neptune Mining Company, and all persons in privity with it, foreclosed, barred and determined, and that the constitutional provision, requiring the giving of full faith and credit to the judgment of the state court, required that the plaintiff recovering the judgment should be held to be, as against the defendant, the absolute owner of the claims merged in the judgment.

Fourth. That under a long line of authorities in the Federal courts, the assignment of debts incurred by a corporation to various persons, to one plaintiff for collection and for the purpose of suit in the Federal Court, after judgment obtained, had been upheld and become a settled practice, although the judgment had been obtained upon claims, no one of which amounted to $2,000.

Fifth. That with a judgment in his favor for more than $2,000, it was right and proper that other creditors of the corporation, citizens of Colorado, should assign their claims to Woodside for collection only, such assignment passing to him under the laws of Colorado, the place of the assignment, full title to the demand in suit, constituting him the real party in interest, and being a full protection to the defendant against a second demand.

Sixth. There was no collusion or fraudulent conferring of jurisdiction on the Federal court. The plaintiff in the state court had a right to sue and obtain judgment, and could properly consider in advance, and act upon the knowledge of, the rights in the Federal court which such a judgment would give him. It was a lawful incident of the judgment of which both plaintiff and defendant should take notice, that the plaintiff, having judgment for more than $2,000, might sue thereon in the Federal court, and that to such judgment as a part of his cause of action other claims of citizens of Colorado might be added, they having been assigned to him, even for purpose of collection only. The addition of such claims, there being a

valid judgment sued on in excess of $2,000, in no manner affected the jurisdiction.

V.

BRIEF AND AUTHORITIES.

Taking these several propositions separately, we submit as to each:

First: The judgments obtained in the District and County Courts of Colorado, courts of record, on valid service on the defendant corporation for $2,724.45, without interest or costs, and $862.36, before the commencement of this suit, and being each debts and obligations for which the directors were liable by reason of their default, were independent debts and a liability upon which this action would lie, and conferred jurisdiction upon the Court so far as the amount in controversy was concerned.

In Huntington vs. Attrill, 146 U. S., 657-684, this court, in an action to enforce a similar statutory liability, said:

> "Whether the Court of Appeals of Maryland gave full faith and credit to the judgment recovered by this plaintiff in New York depends upon the true construction of the provisions of the constitution and of the act of Congress upon that subject.
>
> "The provision of the constitution is as follows: 'Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.' Art. 4, Sec. 1.
>
> "This clause of the constitution, like the less perfect provision on the subject in the Articles of Confederation, as observed by Mr. Justice Story, 'was intended to give the same conclusive effect to judgments of all the states, so as to promote uniformity, as well as certainty, in the rule among them;' and had three dis-

tinct objects: First, to declare and by its own force establish, that full faith and credit should be given to the judgments of every other state; Second, to authorize Congress to prescribe the manner of authenticating them; and third, to authorize Congress to prescribe their effect when so authenticated. Story on the Constitution, Secs. 1307-1308.

"Congress, in the exercise of the power so conferred, besides prescribing the manner in which the records and judicial proceedings of any state may be authenticated, has defined the effect thereof, by enacting that 'the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from which they are taken.' Rev. Stat. Sec. 905, re-enacting Act of May 26, 1790, c. 11, I. Stat. 122.

"These provisions of the constitution and laws of the United States are necessarily to be read in the light of some established principles, which they were not intended to overthrow. They give no effect to judgments of a court which had no jurisdiction or the subject-matter or of the parties. D' Arcy vs. Ketchum, 11 How., 165; Thompson vs. Whitman, 18 Wall., 457. And they confer no new jurisdiction on the courts of any state; and, therefore, do not authorize them to take jurisdiction of a suit or prosecution of such a penal nature, that it can not, on settled rules of public and international law, be entertained by the judiciary of any other state than that in which the penalty was incurred. Wisconsin vs. Pelican Ins. Co., above cited.

"Nor do these provisions put the judgments of other states upon the footing of domestic judgments, to be enforced by execution; but they leave the manner in which they may be enforced to the law of the state in which they are sued on, pleaded, or offered in evidence. McElmoyle vs. Cohen, 13 Pet., 312-325. But when duly pleaded and proved in a court of that

state, they have the effect of being not merely *prima facie* evidence, but conclusive proof, of the rights thereby adjudicated; and a refusal to give them the force and effect, in this respect, which they had in the state in which they were rendered, denies to the party a right secured to him by the Constitution and laws of the United States. Christmas vs. Russell, 5 Wall., 290; Green vs. Van Buskirk, 5 Wall., 307, and 7 Wall., 139; Insurance Co. vs. Harris, 97 U. S., 331-336; Crescent City Co. vs. Butcher's Union, 120 U. S., 141-146-147; Carpenter vs. Strange, 141 U. S., 87.

"The judgment rendered by a court of the State of New York, now in question, is not impugned for any want of jurisdiction in that court. The statute under which that judgment was recovered was not, for the reasons already stated at length, a penal law in the international sense. The faith and credit, force and effect, which that judgment had by law and usage in New York was to be conclusive evidence of a direct civil liability from the individual defendant to the individual plaintiff for a certain sum of money, *and a debt of record on which an action would lie*, as on any other civil judgment *inter partes*. The Court of Appeals of Maryland, therefore, in deciding this case against the plaintiff, upon the ground that the judgment was not one which it was bound in any manner to enforce, denied to the judgment the full faith, credit and effect to which it was entitled under the constitution and laws of the United States."

In Feidler vs. Bartleson, 161 Fed., 35, the Circuit Court of Appeals for the Ninth Circuit, after holding that a domestic judgment could be the basis of a creditor's bill in the Federal court, and dealing with the effect of the assignment for collection of claims merged in the judgment, said:

"An assignment of claims to the appellee for the purpose of collection, could lawfully be made under the statutes of the State of Washington. Those claims

being merged in a judgment, valid on its face, and unimpeachable for fraud, the judgment creditor's right to enforce its payment is as unimpeachable as it would be if the judgment had been based upon a single debt originally due and payable to him. Bowden vs. Burnham, 59 Fed., 752, 8 C. C. A., 248; Alkire Grocery Co. vs. Richesin, (C. C.), 91 Fed., 79."

In Tabor vs. Commercial National Bank, 62 Fed., 383-388, the Circuit Court of Appeals for the Eighth Circuit, dealing with a situation closely analogous to the one in the case at bar, said:

"Finally, it is insisted that the complaint is insufficient to sustain the judgment below because it counts upon the judgment against the mining company, and does not plead the original debt on which that judgment is founded. The argument is that, under section 16, *supra*, the plaintiff in error is only liable for the debts of the mining company contracted within a certain time, and that a judgment is not a contract debt, and is not such a debt as this statute contemplates. It is worthy of notice that in this case there is no question of the time when the debt in question was incurred, because the corporation never filed any reports, and the plaintiff in error became liable for all its debts. The only question is, was this judgment a debt of the corporation within the meaning of this statute. A judgment for the recovery of money is the highest evidence of a debt. While, as against others than parties and privies to it, it may not be evidence of the facts on which it was rendered, it is evidence against everybody of its rendition, and of the fact that the judgment debtor owes the judgment creditor the amount of the judgment. Greenl. Ev. Sec. 538. By force of the statutes of Colorado the plaintiff in error has become liable for the debts of this corporation. Whatever was a debt of the corporation is now his debt. This judgment was a debt of the corporation,

and, while many contradictory decisions may be found in the State of New York as to the effect of such a judgment as evidence in a suit against a stockholder or director, we are of the opinion that the weight of reason and of authority is that this judgment may be counted upon in a complaint to recover its amount under this statute from the plaintiff in error, and may be introduced in evidence to prove the debt it establishes. Frost vs. Investment Co. (Minn.), 59 N. W., 308; Slee vs. Bloom, 20 Johns., 669-682; Grund vs. Tucker, 5 Kan., 70-78; Donworth vs. Coolbaugh, 5 Iowa, 300; Wilson vs. Coal Co., 43 Pa. St., 424-427; Merrill vs. Bank, 31 Me., 57; Came vs. Brigham, 39 Me., 35; Milliken vs. Whitehouse, 49 Me., 529."

The case last cited is also of interest as laying down the salutary rule that corporators and directors who secure the grant of a corporate franchise under the general corporation laws of a state ought to bear the burdens as well as enjoy the benefit of those laws. (Page 385). In the case at bar the record shows that of thirteen directors, not one was a resident of Colorado, and that when they folded their tents and silently stole away, they left to the creditors of their corporation no hope of payment of their just debts, other than by the remedy invoked in this case.

In Frost vs. St. Paul Banking and Investment Company, 57 Minn., 308, Frost having recovered a judgment against the corporation defendant, began proceedings to enforce the statutory liability of the stockholders. In those proceedings the force and effect of Frost's judgments were drawn in question, and the court said:

"That relates to the proof of Frost's claims. His judgments against the corporation were rendered before this proceeding was begun. The question made in respect to them is, are they evidence of indebtedness of the corporation in a proceeding to enforce the liability of stockholders for unpaid subscriptions, and the statutory liability? We have no doubt they are.

As against others than parties and their privies, a judgment (*in personam*, at any rate) is not evidence of the antecedent existence of the facts on which it is rendered. But it is, as against everybody, evidence of its rendition, and of the legal consequences resulting from its rendition. 1 Greenl. Ev. Sec. 538."

In Montgomery vs. Whitehead, 40 Colo., 322, the Supreme Court of Colorado says:

"The great weight of authority supports the doctrine, that the judgment, in an action by a creditor against a corporation, in the absence of fraud and collusion, pronounced by a court having jurisdiction, is conclusive of the amount and validity of the claim as against stockholders who are made defendants in a suit to reach corporate assets wrongfully withdrawn and in the hands of stockholders. Cook on Corporations, Secs. 209-224, and cases cited; Singer vs. Hutchinson, 183 Ill., 606; Bissit vs. Navigation Co., 15 Fed., 353, and note page 360, where many cases are cited upon this question; Clark & Marshall on Corporations, Sec. 800, page 2470, and many cases cited.

The last authority states the law as follows:

"It is a well settled rule that a judgment rendered by a court of competent jurisdiction is conclusive, in the absence of fraud or collusion, against the parties to the suit, and against all persons represented by the parties; and it is also well settled that a corporation represents its stockholders in all matters within the scope of its corporate powers transacted in good faith by its officers. In an action against a corporation by a creditor, the stockholders are represented by the corporation, within this principle; and it follows that the judgment rendered against the corporation therein, if the court has jurisdiction, is conclusive upon the stockholders, in the absence of fraud or collusion, in any collateral suits or proceedings against them, in

equity or at law, to compel payment of the balance due on their stock."

"At section 209, in Cook on Corporations, it is stated: 'The authorities have firmly established the rule that, in the absence of fraud and collusion, judgments against the corporation, if the court had jurisdiction, are conclusive against the stockholders, as to the validity and amount of the creditor's claim.'

"And such is held to be the rule in this jurisdiction."

Second: By the laws of Colorado, where these debts were contracted, the assignments made and these judgments obtained, an assignment for collection, under the circumstances shown in this case, is an assignment in good faith, carrying all the right and title to the assignee, and he becomes and is the owner of the claim, and the real party in interest in any suit to enforce it.

That an assignment of a claim against a debtor for purposes of collection, and payment of consideration only after recovery in suit by the assignee, passes a good title to the assignee, and constitutes him the real party in interest, has long been the settled law of Colorado.

In Bassett vs. Inman, 7 Colo., 270-273, the court says:

"The plaintiff as assignee of the note and account sued upon, was 'the real party in interest,' within the meaning of the Code of Civil Procedure, even though the consideration of the assignment may have been payment to the assignor after recovery in a suit by the assignee."

And the court cites:

Cummins vs. Morris, 25 N. Y., 625.
Mecher vs. Cleghorn, 44 N. Y., 349.
Caulfield vs. Saunders, 17 Calif., 569.

In Welch vs. Mayer, 4 Colo., App., 440-445, the court said:

"If the defendant owed the debt, it was a matter of indifference to him to whom he paid it, provided he was protected in its payment; and an order from his creditor, directing him to apply the money in a certain direction, would be ample protection against any future claim of the creditor for the same money, whether the order was made with or without consideration. In this case he had the right to insist that the entire claim against him should not be divided without his consent; but, having given his consent, what interest had he in the consideration for the assignment, or how could he be injured if it was made without consideration? Counsel has referred us to a number of authorities as supporting his contention; but if there is one which holds that mere want of consideration between the assignee and assignor, without more, is a good defense by the debtor, we have overlooked it.

* * * * * * * * *

"On the other hand, it is held that as between a holder and an acceptor, it is immaterial what consideration the holder paid, or whether he paid any. In Milnes vs. Dawson, 5 Exch., 948, an indorsee sued the acceptor upon his acceptance of a bill drawn on him. The defendant pleaded that the plaintiff never gave any consideration or value for the bill. The court held that if the bill was a gift from the drawer, the plaintiff could not have sued *him* upon it; but that the acceptor could not make that defense. In Tarbell vs. Sturdevant, 26 Vt., 513, the reason why a maker of a note cannot avail himself of a defense which might be good between the payee and his immediate indorsee, is stated thus: 'On this question it is to be observed, that the defendant does not pretend but that he justly owed the debt, or that he had any defense, legal or equitable, which should shield him from the payment of it to some one. It is therefore quite immaterial to him to whom he pays it, or who recovers upon it, provided, when the payment is made, or a recovery,

had, it will bar any further claim on the note by others.' "

In Walsh vs. Allen, 6 Colo., App., 303-305, the court said:

"Defendant's counsel says that on account of some understanding between the plaintiff and Gordon that a portion of the avails of the note, when collected, are to be paid to the latter, the plaintiff is not the real party in interest, and therefore not entitled to maintain this suit. The legal title to the note vested in the plaintiff by the assignment, and he is *ipso facto*, the real party in interest within the meaning of the code. Gomer vs. Stockdale, 5 Colo., App., 489.

"Counsel also says that the assignment, by reason of the character of its consideration, is infected with champerty. Upon what principle he considers himself in a position to raise a question of this kind he does not state. It was not raised in the trial court, and we are not disposed to discuss it. It is sufficient for present purposes to say that the consideration of the note was not champertous. The defendant owes the debt, its payment to the plaintiff will extinguish it, and what the consideration of the assignment was, or whether there was any, is a question in which the defendant has not the slightest concern."

In Marks vs. Anderson, 1 Colo., App., 1-5, the court said:

"It appears to have been conceded that the amounts claimed by Wood Bros. and Maynard were due and just debts. The main contention on the part of the appellant is that the assignment of Wood Bros. to Maynard, being only for collection, no consideration having been paid, did not vest the intervenor with a title, so that he was entitled to the assigned fund to the exclusion of other creditors.

"It is conceded that so far as the original claim of Maynard was concerned, it was by virtue of the assignment of Anderson & Son entitled to priority from the fund assigned.

"The important question seems to have been overlooked by counsel, or made secondary. If the assignment of Anderson & Son of the entire fund for the payment of the two claims was legal and proper, there was a disposition by the assignors of the entire fund sought to be reached by the appellant, and if that disposition was valid it is unimportant whether the payment of the claim of Wood Bros. was direct, or through the agency of the intervenor; whether there was a consideration paid by Maynard or not. In other words, if the fund, in the hands of Bradbury had been properly and wholly disposed of, and nothing undisposed of remained with him, there was an end of the process of garnishment, and the arrangement between Wood Bros. and Maynard, in regard to the distribution of the fund, was one in which appellant had no concern, and the same may be said in regard to the question of whether a consideration passed for a transfer of the claim of Wood Bros. to Maynard. It was a matter resting entirely with them, which in no way effected the right of appellant to reach the fund in the hands of Bradbury."

In Reduction Co. vs. Johnson, 10 Colo., App., 139, the court said:

"The defendant undertook to inquire into the consideration of the assignments to the plaintiff, and the court refused to admit the evidence. If the defendant owed the debt, payment to the assignee would discharge it, and it is immaterial what, as between the assignors and the assignee, the consideration was, or whether there was any."

In Stanley vs. Board of Supervisors, 15 Fed., 484, the court said:

"Where a party, who is entitled to sue in the federal courts, transfers his cause of action to another who has the same right, of what moment is it that the

transfer was for an inadequate consideration, or was wholly without consideration, so long as the legal title is transferred? The defendant has no reasonable ground for complaint, and the court, for whose advantage the statute was framed, has not been imposed upon or burdened with an improper or collusive controversy. Regarding the other point—that the court cannot retain jurisdiction where the amounts assigned were less than $500—there is more doubt. The assignments were made without any other consideration than that contained in the agreement, viz., the assignee was to bring suit, pay all expenses, and, in case of recovery, account for half the net proceeds.

"It is very certain that a shareholder, whose claim against the defendants amounted to less than $500, could not maintain an action in this court. It would also seem clear that Mr. Williams was not prohibited from making a *bona fide* purchase of all the claims. Being the absolute owner of all, he could institute suit in this court for the whole amount. 'The matter in dispute' would then be the property of one man. In other words, if a party is the honest owner of a claim which he is entitled to enforce in the federal courts, his right should not be defeated by proof that the claim was at one time composed of several separate and distinct items of less than $500 each."

In Davis vs. Mills, 99 Fed., 39, the court discussed a state of facts closely analogous in many points to the case at bar, and dealing with the question of the validity of the assignment of the claims, the rule was shown to be well settled that it was governed by the law of the state where the liability arose, and which is the domicile of the assignor and assignee, and that the federal courts will recognize and follow the law of such foreign state.

In the case now before the court, the assignee, Woodside, and every one of his assignors, were residents and citizens of Colorado, and under its laws had a clear right to consolidate their claims for collection by assignment to one person, and to

lawfully thus include them in one judgment. They were claims which were in every case proper subjects of assignment, and they carried certain special rights and remedies which passed to the assignee, and remained with his judgment. Chief of these was the right to pursue and enforce the statutory liability of the directors of the corporations.

The rule is the same in Iowa, where the suit on these judgments and assigned claims was brought.

Wardner vs. Jack, 82 Iowa, 435.
Whittaker vs. Johnson, 10 Iowa, 151.
Gere vs. Council Bluffs, 67 Iowa, 272.

Third: That by the judgments of record, personal service having been made on defendant, all questions as to the right of the plaintiff to sue upon the claims assigned to him, his title to them, and the character in which he held them, were, as against the defendant, the Neptune Mining Company, and all persons in privity with it, foreclosed, barred and determined, and that the constitutional provision, requiring the giving of full faith and credit to the judgment of the State Court, required that the plaintiff recovering the judgment should be held to be, as against the defendant, the absolute owner of the claims merged in the judgment.

Article 4, Section 1, of the Constitution declares that "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." That a judgment of a state court of record is within the provision of course needs no citations. What is meant by giving it full faith and credit has been the subject of discussion, but one proposition, pertinent here, has been so clearly declared, that we do little more than refer to the authorities.

It is that when duly pleaded and proved in another state, they have the effect of being not merely *prima facie* evidence, but conclusive proof of the rights thereby adjudicated, and among those rights must necessarily have been the ownership of the claim originally sued upon.

Fauntleroy vs. Lum, 210 U. S., 230-237.
Huntington vs. Attrill, 146 U. S., 657-684.
United States vs. California, 192 U. S., 355.
Christmas vs. Russell, 5 Wall., 290.
Crescent City vs. Butchers, 120 U. S., 141-147.

If that be true, then for the court below to resolve the judgment back into its original components, and to determine that the plaintiff recovering such judgment was not the owner of the claims, is not giving to such judgment the full faith and credit required by the constitutional provision. The court below called it a right to go back of the judgment: we respectfully submit that this is precisely what the provision forbids.

Fourth: The assignment of claims against a corporation, held by different persons, to one plaintiff for collection and for the purpose of suit in the Federal Court, after judgment obtained, where all the assignors were citizens of Colorado and the defendants were citizens of Iowa, was a lawful and proper proceeding and has been upheld, even where no one of the assigned claims amounted to $2,000.00.

The question is really one of jurisdiction, resting upon the diversity of citizenship, rather than on the jurisdictional amount necessary. In the case at bar the record clearly shows the diverse citizenship and no contention was made in that regard.

The ground of objection made by counsel and sustained by the court below was wholly based upon the lack of one claim, held originally by one person, in excess of two thousand dollars, the court declining to treat the judgment as an independent debt of record.

Bowden vs. Burnham, 59 Fed., 752, is clearly in point. The whole case is interesting and along several lines applicable to the case at bar, but especially so on this branch of our appeal. In that regard the court said:

> "It is said the court did not have jurisdiction for the further reason that the several assignors of the claims assigned to the plaintiffs could not have brought

suit thereon in the circuit court, because the claim of each was less than $2,000 in amount.

"The act of congress provides that the circuit court shall not 'have cognizance of any suit * * * to recover the contents of any note or other chose in action in favor of any assignee * * * unless said suit might have been prosecuted in such court to recover the contents if no assignment had been made.' Act Aug. 13, 1888, (25 Stat. 433, Sec. 1.) The prior acts of congress regulating the jurisdiction of the circuit court contained substantially the same provision, and it has been the uniform holding in the circuits that the clause of the section we have quoted has relation to the citizenship of the assignor, and not to the amount of the note or other chose in action assigned. The essential requirement of this clause of the statute is satisfied when the citizenship of the assignor is such that he could have maintained a suit against the debtor in the circuit court.

"When the plaintiffs had acquired, in good faith, from citizens of states other than the state of which the defendants were citizens, claims amounting in the aggregate to $2,000, they had a right to sue the defendants on all of such claims in one action in the circuit court, although no one of the claims amounted to $2,000. The requisite amount and the citizenship necessary to confer the jurisdiction are united in the plaintiffs; and the jurisdiction is not affected by the fact that the several assignors of the claims could not have maintained separate suits thereon, because the claim of each was less than $2,000 in amount. Stanley vs. Board, 15 Fed., 483; Hammond vs. Cleaveland, 23 Fed., 1; Bernheim vs. Birnbaum, 30 Fed., 885; Chase vs. Roller-Mills Co., 56 Fed., 625."

In Bernheim vs. Birnbaum, 30 Fed., 886, the court held:

"It is insisted that the complainants, Bernheim, Bauer & Co., added to their claim against the defendants an open account against him assigned to them by

other parties, and then brought the bill for the whole amount, and that this is incompetent, because the assignor of the account could not have brought the suit, it being, alone, less than the jurisdictional limit. This is perhaps the first time since this important amendment to the laws conferring jurisdiction on the United States court was enacted that it has been necessary to construe it. The language of the act above referred to is ambiguous and involved to an unusual and remarkable extent, especially when its fundamental importance is considered.

"The language, 'unless such suit might have been prosecuted to recover said contents if no assignment or transfer has been made,' can have no reference to the question of amount. That has been definitely provided for in the first section of the act. That provides where the matter in dispute exceeds, exclusive of interest and costs, the sum and value of $2,000, the court shall have jurisdiction. Is there any good reason why the matter in dispute cannot be composed of other claims, honestly acquired, which in themselves are less than the jurisdictional amount? None has been suggested in argument, nor has any occurred to the court; besides, it has been expressly held to be legitimate in Hammond vs. Cleaveland, 23 Fed. Rep., 1. It is said that this decision was under the act of 1875, where the words 'recover thereon,' and not 'recover the contents,' are used. This is a distinction without a difference. Again, it is said that that decision was affected by a California statute providing for joining claims, but a statute of like practice obtains in Georgia. Code, 3261. The language of the recent act existed substantially in the act of 1789, which has been repeatedly construed by the courts; and the decisions so construing lead the court to the conclusion that the question of citizenship is all that the language in question has reference to. The congress of the United States could not have intended

> to deny to a citizen the right of access to the United States courts where he had a matter in dispute amounting to more than $2,000, made up of choses in action of less amount than $2,000, provided, always, that these were honestly assigned to him and that the title passed."

The case of Chase vs. Sheldon Roller-Mills Co., 56 Fed., 625, makes the same distinction as to the necessity for diverse citizenship, rather than the identity of the aggregate amount, and that the sum in dispute does not come in controversy under the provisions of the act of August 13, 1888, except as to the general requirement, as to all suits, that the sum in dispute shall exceed $2,000, exclusive of interest and costs. The court then discusses the rule of construction applicable to these statutes, as laid down by this court, citing

> Bushnell vs. Kennedy, 9 Wall., 387;
> Holmes vs. Goldsmith, 147 U. S., 150;

and pointing out that the rulings made under the judiciary act of 1789 "remain applicable insofar as they hold that the language of the statute is to be interpreted by the purpose to be effected and the mischief to be prevented."

The court then said:

> "The restriction in regard to suits upon assigned choses in action is intended to prevent the creation of jurisdiction by the transfer of claims held by a citizen of the same state with the debtor to a citizen of another state. The general rule being that the jurisdiction depends upon the adverse citizenship of the parties plaintiff and defendant, it would be an easy matter to create jurisdiction in regard to claims originating between citizens of the same state by the transfer of the chose in action to one who was a citizen of a state other than that wherein the party to be sued resided, unless some restriction was placed upon the right to take jurisdiction over assigned claims. Hence, in the judiciary act of 1789, and in all subsequent acts, a

clause limiting the jurisdiction in this particular is to be found. It never was the purpose, however, of these clauses, to define or limit the amount necessary to be involved in order that the controversy might be within the jurisdiction of the federal courts. That subject was dealt with in another, separate and distinct, part of the statute. The purpose of the clause in regard to assigned choses in action was to prevent the creation of jurisdiction by the mere device of transferring the claim to one who was a citizen of a state other than that of the debtor. This clause has no application to the transfer of choses in action originating between citizens of different states, and never owned by citizens of the same state. It does not restrict the jurisdiction over such causes of action, but is intended to apply only to such as originate between, or have become the property of, citizens of the same state, and which, so long as they remain the property of the original party, could not be brought within the constitutional grant of jurisdiction over matters in controversy between citizens of different states. In the case at bar, neither of the three promissory notes sued on has ever been the property of a citizen of the same state of which the defendant is a corporation. In the particular of diverse citizenship, an action thereon would always have been within federal jurisdiction, and the transfer thereof to the plaintiffs was not from one who was a citizen of the same state with the deendant."

In Bergman vs. Inman, 91 Fed., 293, the precise question here in issue was discussed, the rule we contend for sustained and thus summarized in the syllabus:

"An assignee of choses in action aggregating over $2,000 may maintain a suit thereon if his assignees were citizens of different states from the defendant, though they could not have maintained separate suits, because none of the claims singly was sufficient in amount."

The case of Tennent Stribling Shoe Co. vs. Roper, 94 Fed., 739, is of special interest, as it bears not only upon the question of amount necessary to confer jurisdiction and the rules of law applicable thereto, but also with the making up of the amount by assignment of claims from other qualified citizens, as in the case at bar.

The Circuit Court of Appeals for the Fifth Circuit, by Judge Shelby, held that claims of that character could be consolidated by assignment to make up the requisite amount to sustain suit in the Federal courts, (94 Fed., 739) and the court said:

> "This is a suit for $2,336.64, begun by attachment by the Tennent-Stribling Shoe Company, a corporation chartered under the laws of Missouri, against W. E. Roper, a citizen of Mississippi. Of this sum $920.90 is an account which the plaintiff in error holds against the defendant in error for goods sold to him. The remainder of the sum sued for is composed of accounts which were held against the defendant in error by citizens of states, or by corporations organized and chartered in states, of which neither the plaintiff in error nor the defendant in error was a citizen. The assignee of such claims, if in the aggregate they reach the jurisdictional amount, can sue on them in the United States courts."

In the same case (page 741) the court also held that the defendant should not be permitted to avoid the payment of a debt by pleading the illegality of a contract of assignment that can be, and is, ratified by the parties to it, for the reason that the defendant could not be again made to pay it, if recovered on by the assignee.

In Brigham vs. Gross, 107, Fed., 769, the precise question here was presented, and all the authorities reviewed. The law as there found is thus stated in the syllabus:

> "A federal court has jurisdiction of an action at law between citizens of different states to recover an

amount in excess of $2,000, based upon a number of separate claims, some of which were assigned to the plaintiff by others, where the joinder of such claims is permitted by the statute of the state, and the assignors were all residents of states other than that of defendant's residence, although no one of the claims is alone sufficient in amount to give the court Jurisdiction."

Brigham vs. Gross, 107 Fed., 769.

The case of Chase vs. Sheldon Roller Mills Co., 56 Fed., 625, makes the same distinction as to the necessity for diverse citizenship, rather than the identity of the aggregate amount, and that the sum in dispute does not come in controversy under the provisions of the Act of August 13, 1888, except as to the general requirement, as to all suits, that sum in dispute shall exceed $2,000.00, exclusive of interest and costs.

We submit, therefore, that these cases clearly establish that even without the judgment in excess of the sum of $2,000.00, upon which the suit was partly founded, the jurisdiction should have been sustained because the jurisdictional aggregate was reached by the lawful assignment of claims from assignors who were in each case citizens of the State of Colorado, while all the defendants were citizens of the State of Iowa.

Fifth: That with a judgment in his favor for more than $2,000.00, it was right and proper that other creditors of the corporation, citizens of Colorado, should assign their claims to Woodside for collection only, such assignment passing to him, under the laws of Colorado, the place of the assignment, full title to the demand in suit, constituting him the real party in interest, and being a full protection to the defendant against a second demand.

Under subdivision second above, we have already cited the Colorado and Iowa cases holding that in both states an assignment for collection is valid and proper and not subject to objection on the part of the creditor, and that such assignee is "the real party in interest" within the meaning of the law, and we

therefore here make reference to those cases, as establishing the appellant's title to the claims added, other than those included in his judgment for $2,724.00. Adding them in no manner affected the jurisdiction, and where by the law of the place of assignment, as well as by the law of the forum, the assignment passed the title, made the assignee the real party in interest and fully protected the defendant in paying the claim, and from any danger of a further demand, such assigned claims became of themselves proper causes of action in the court below.

Huff vs. Bidwell, 151 Fed., 563.

Sixth: There was no collusion or fraudulent conferring of jurisdiction on the Federal Court. The plaintiff in the State Court had a right to sue and obtain judgment, and could properly consider in advance, and act upon, the knowledge of the rights in the Federal Court which such a judgment would give him. It was a lawful incident of the judgment, of which both plaintiff and defendant should take notice, that the plaintiff, having judgment for more than $2,000.00, might sue thereon in the Federal Court, and that to such judgment, as a part of his cause of action, other claims of citizens of Colorado might be added, they having been assigned to him, even for purpose of collection only. The addition of such claims, there being a valid judgment sued on in excess of $2,000.00, in no manner affected the jurisdiction.

In the light of the decisions we have already cited to this court, as to the lawfulness of the acts of appellant in taking his assignments, and putting them into a judgment against the Mining Company, there would seem to be something more needed to sustain a finding of collusion, or creation of Federal jurisdiction, than the mere presence in the mind of appellant's counsel of an intention to pursue defendants in the Federal court. We have shown this court that even without a judgment, these claims could have been consolidated and sued on under a well settled rule of law, and where most of the decisions sustaining the rule were in fact rendered, after the decisions of the cases relied on by the court below. Until the decision in

the case at bar, the rule announced in those cases had not in any of the circuits been deemed applicable to the state of facts disclosed by this record. Counsel therefore had a right to look forward to strengthening his chance for recovery, by obtaining a judgment against the corporation, not only because it made more certain the amount and validity of the debt, but also because he would then go into the Federal court still better armed, upon any possible question of jurisdiction.

There was no concealment about it. The record (Abstract, pages 90 and 91) shows that while the suits in Colorado were pending, counsel wrote to six of the directors, defendants below, advising them of the pendency of the suits, and that the creditors intended pressing their claims against the directors upon their statutory liability, and that no reply was made.

The case of Chicago vs. Mills, 204 U. S., 321-330, is in point on this question. This court there said:

> "It is also true that, in answering to a question put in the language of the ninety-fourth rule, as to whether the suit was brought to confer upon the Circuit Court of the United States jurisdiction in a case of which it would not otherwise have cognizance, complainant answered that he so understood it, but subsequently said that he did not understand the question. This admission, intentionally made, would not necessarily show collusion. But we think that it was not the purpose of the complainant to say more than that he expected his action to be brought in the United States court. When a citizen of one state has a cause of action against a citizen of another state which he may prosecute lawfully in a Federal court, and when the suit is free from fraud or collusion, his motive in preferring a Federal tribunal is immaterial. Blair vs. Chicago, 201 U. S., 400-448, and previous cases in this court therein cited."

In Blair vs. Chicago, 201 U. S., 448, referred to in the last citation, this court said:

"As to the conspiracy to get the case into the Federal court, with a view to the decision of the rights of the parties therein, we are not aware of any principle which prevents parties having the requisite citizenship and a justiciable demand from seeking the Federal courts for redress, if such be their choice of a forum in which to have contested rights litigated. Having a proper cause of action and the requisite diversity of citizenship confers jurisdiction upon the Federal courts, and in such cases the motive of the creditor in seeking Federal jurisdiction is immaterial. South Dakota vs. North Carolina, 192 U. S., 286, 310; Dickerman vs. Northern Trust Company, 176 U. S., 181, 190; Lehigh Mining and Manufacturing Company vs. Kelly, 160 U. S., 327, 336; Crawford vs. Neal, 144 U. S., 585; Cheever vs. Wilson, 9 Wall., 108, 123; Smith vs. Kernochen, 7 How. 198, 216."

The cases cited by this court in Blair vs. Chicago, just referred to, present varying phases of this question of wrongful purpose in obtaining Federal jurisdiction and we cite them all in support of our contention.

South Dakota vs. North Carolina, 192, U. S., 286, 310.
Dickerman vs. Northern Trust Co., 176, U. S., 190.
Lehigh M. & M. Co. vs. Neal, 144 U. S., 585.
Cheever vs. Wilson, 9 Wall., 108, 123.
Smith vs. Kernochen, 7 How., 198-216.

VI.

In none of the cases relied on by the court below in its decision, was there any precedent judgment, fixing the rights of the creditors and debtor, nor were claims and demands, of the character of those in this action, in any way involved. They were in each case actions upon municipal bonds or coupons, and brought directly upon the instrument. There was no lawful consolidation of the interests in the various bonds or coupons

as by a judgment merging the rights. It was merely the manual possession by one man of bonds and coupons belonging to a number of people, and action brought by him thereon. In the language of this court, in Waite vs. Santa Cruz, 184 U. S., 328:

> "Thus a case was made by which the Circuit Court was led to take cognizance of certain claims too small for the jurisdiction if they had been severally sued on by the real owners."

This is vastly different from the case at bar, where the owners of the various claims assigned them to the appellant for purposes of collection, and to be placed in judgment, and he thereupon proceeded to sue and obtain judgment in the state court, fixing and determining the rights of the parties, and putting him upon an entirely different status as to the defendant. By the judgment all rights against the defendant on the part of each of the assignors were at an end, and merged in the plaintiff, who alone held any legal relation to them, so far as the defendant was concerned. The obtaining of the judgment was a lawful and proper proceeding, and the judgment had all the incidents and rights attaching to any judgment. It fixed, among other things, as to the defendant company and all persons in privity with it, the legal ownership of the claims.

The only testimony in the record supporting the theory of a collusive intent to create a Federal jurisdiction is found in the evidence of E. J. Christie, on pages 86 and 88, Abstract of Record. It does nothing more than show that the counsel for the then plaintiffs had in mind the fact that if he could obtain a judgment consolidating the claims into "one independent debt of record," he could sue on that judgment and on such other judgments and demands as might be assigned to plaintiff, in any Federal court, other than Colorado, where he might find the defendants resident. This was pursuing a lawful and orderly course, to a lawful end, a judgment for the debts, so that thereafter upon that judgment still other lawful proceedings might be initiated.

It was precisely the same as when counsel advises a citizen of any state, desiring to sue in the Federal court of that state, that if he in good faith removes from such state and becomes a citizen of some other state, the bar to the jurisdiction will be removed, and that the motive of the removal, so long as it actually takes place, is immaterial.

Cheever vs. Wilson, 9 Wall., 108-123.
South Dakota vs. North Dakota, 192, U. S., 311.
Dickerman vs. Northern Trust Co., 176 U. S., 191-192.

We therefore ask that the judgment of the court below be reversed, and the cause remanded, with such instructions as shall to this court seem proper.

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Office Supreme Court, U. S.
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Clerk.

Brief and Argument of Defendants in Error.

Supreme Court of the United States

OCTOBER TERM, 1909.

No. [redacted] 56.

WILLIAM WOODSIDE, PLAINTIFF IN ERROR.

vs.

ALBERT VASEY, W. R. LAYBOURN, E. E. STOEHR, *ET AL.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

Case Reported Below as Woodside vs. Vasey, 142 *Fed.*, 167.

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CORRECTION OF PLAINTIFF IN ERROR

STATEMENT OF FACTS.

I

In the statement of facts of the plaintiff in error it is contended that:

> "The question presented by the record is whether a number of men having claims against a mining cor-

poration none of which amounts to $2000 may assign their claims to one of their number for collection to an amount in excess of $2000 and having obtained a judgment in the courts of Colorado in excess of $2000 other claims and judgments each for less than $2000 may be assigned to the same plaintiff, so that he may lawfully maintain a suit in the Federal Court in the State of Iowa against the members of the board of directors of the corporation."

This statement is not a correct statement of the facts in that the opinion set out on page 55 of the abstract shows that the court found "the testimony conclusively shows that the plaintiff is *not in fact the owner of* or the real party in interest in any of the claims against the mining Company that have been assigned to him; that the amount of his own claim against said company is only $162.36 and the amount of none of the separate claims of the others assigned to him exceeds $650 while some are less than $100.00, but the aggregate of all amounts to $5500.00."

The court incorporated into its opinion the evidence of the plaintiff as to the present *ownership* of the claims and judgments as follows:

> "The assignments of the accounts to me and of the judgment aside from my personal account were made to me for the sole purpose of beginning suit in my name and to thus save expenses. I have no interest in any of said claims or judgments except my individual claim. The *actual ownership* of the said judgment and the proceeds thereon and the accounts and the proceeds thereof *belong to the several assignors* and I am to account to them and to pay them such proceeds in case I collect them."

Thereupon the court further found as conclusions of fact:

> "As none of the claims or demands so assigned to the plaintiff are of sufficient amount to authorize

an action thereon in a court of the United States, it seems clear that this action cannot be maintained in this court."

It thus appears that at the time of the commencement of the suit and of the trial of the case, the plaintiff *owned only* $162.36 of the judgment and assigned claims and that the remainder of the judgment and claims *belong to the original holders* each of whom was contributing to pay the costs and expenses of prosecuting the case. In other words can the plaintiff maintain an action where the only claim he owns is insufficient in value to confer jurisdiction by adding to his claim numerous other claims of other owners no one of which is sufficient in value to confer jurisdiciton.

It is not correct as stated by plaintiff in error on page 3 of his brief that:

> "It is admitted that all of these claims were assigned by the original holders both prior to the judgments and afterwards for collection only."

No such statement appears in the record and opinion certified to this court. On the contrary it appears from the finding of facts by the court that the plaintiff Woodside, though holding an assignment from the original holders of the numerous claims did not in fact own any of them except his individual claim and that each of the other original holders remained the actual owner of his claim notwithstanding the assignment of record both before the judgment was entered in Colorado and after the judgment was entered. In other words the record shows that the plaintiff was not the owner of the claims for collection only but was owner of his own claim and that the original holders still owned their several claims and were joint owners of the judgment.

The statement of facts is further incorrect, page 4 of plaintiff's brief as follows:

> "An answer was filed and trial had to the court without a jury and the court being of the opinion

> that none of the claims amount to $2000 and they having been assigned to Woodside for collection only, he was not the owner of the claims nor the real party in interest and that as to the judgment for $2724.45 it did not change the plaintiff's right to or interest in the several claims that were so assigned to him and upon which the judgment rested and that the court might go back of the judgment to ascertain upon what it was founded, etc."

This statement is incorrect in that the court did not limit its finding in its opinion; that none of the claims originally amounted to $2000 and having been assigned to Woodside for collection only, that he was not the owner of the claims but the court incorporated into its opinion the evidence of Woodside, the plaintiff in error, in respect to the actual ownership of the several claims and the actual ownership of the judgment and having found that the judgment was actually owned jointly by the several original assignors of claims to Woodside and that each was contributing to the trial of the case in the Federal Court in proportion to his ownership of the judgment, thus concluded its opinion as follows:

> "As none of the claims or judgments so assigned to the plaintiff are of sufficient amount to authorize an action thereon in a court of the United States, it seems clear that this action cannot be maintained in this court."

Thus it appears from the record that the refusal to take jurisdiction of the plaintiffs action was not because a number of men in Colorado owning claims could not assign them to one person for collection and then maintain an action in the Federal Court where the amount exceeded $2000 in the aggregate, but that on the facts as found by the court that the actual ownership remained in the original assignor and as no one of the claims was sufficient in amount to confer jurisdiction, none was conferred by the transactions between the assignors and the plaintiff..

II.

POINTS OF THE DEFENDANTS IN ERROR IN ANSWER TO AND AVOIDANCE OF THE PLAINTIFF'S SPECIFICATIONS OF ERROR.

First: The court having found that the plaintiff Woodside was *not in fact the owner of* the claim sued upon except as to the amount of $162.36 and that no one of the claims assigned to the plaintiff was sufficinet in amount to confer jurisdiction upon the Federal Court; it had no jurisdiction of the plaintiff's cause and dismissed the same for want of jurisdiction.

Second: The court having found that the judgment in the District Court of Custer County, Colorado, against the Neptune Mining Company rested upon numerous claims assigned to the plaintiff Woodside, no one of which claims exceeded in amount $650.00 and that the plaintiff Woodside was not the owner of any part of said judgment except the sum of $162.36, it did not confer jurisdiction upon the court over the plaintiff's action.

Third: The court having found and declared in its opinion that the plaintiff Woodside was not the actual owner at the time of the commencement of the suit in the Federal Court and at the time of the trial of any of the claims described in the complaint except his individual claim of $162.36 and was not the actual owner of any part of the judgment described in the plaintiff's complaint except the sum of $162.36 and that said claims and said judgment other than the individual claim of the plaintiff, were actually owned by the several persons from whom the plaintiff Woodside received them on assignment; it had no jurisdiction.

Fourth: The plaintiff in error having declared upon a penal statute of the State of Colorado as its basis of the right to recover against the defendants as officers and directors of the Neptune Mining Company, a corporation of Colorado, was required to disclose in his complaint and establish by

proof the claims or causes of action upon which the judgment of the plaintiff in the District Court of Custer County, Colorado rested. Thus the court had before it, without going behind the judgment against the Neptune Mining Company, the facts upon which the judgment rested.

Fifth: The complaint of the plaintiff in error being such that in order to recover against the defendants as officers and directors of the Neptune Mining Company for debts contracted by the Neptune Mining Company within certain periods during which the officers and directors of the Neptune Mining Company were in default in filing an annual report with the Secretary of State of Colorado, required proof upon the part of the plaintiff of the existence of certain facts independent of the judgment of the District Court of Custer County, Colorado, constituted a declaration upon the original cause of action upon which the judgment rested and not a declaration upon the judgment itself as an independent cause of action against the defendants.

Sixth: The plaintiff in error was not entitled to count upon the judgment of the District Court of Custer County, Colorado, against the defendants as officers and directors of the Neptune Mining Company as an independent cause of action.

III.

BRIEF AND AUTHORITIES.

Taking the several propositions or points stated by us in answer to and avoidance of the plaintiff's specifications of errors separately.

First: Our first proposition is that the court found that the plaintiff Woodside *was not in fact the owner of the claim sued upon except as to the amount of* $162.36 and that no one of the claims assigned to the plaintiff was sufficient in amount to confer jurisdiction upon the Federal Court. Under this finding of fact as to the first proposition stated in our points the plaintiff in error was attempting to prosecute an action

in the Federal Court for $162.36 by adding to his claim for the purpose of conferring jurisdiction upon the court an amount equal to $2000 individual claims of numerous other men and firms in the State of Colorado.

As in point and supporting the above proposition and as we think conclusive of the question, see the following cases which are cited in the opinion of the Hon. Henry T. Reed, in the Instant case.

Williams vs. Nottowa, 104 U. S., 209.

Bernards Twp. vs. Stebbins, 109 U. S., 341.

Lake County vs. Dudley, 173, U. S., 243.

Waite vs. Santa Cruz, 184 U. S., 302-325.

The case of Waite vs. Santa Cruz, 184 U. S., 302-325 appears to involve the precise point involved in the instant case and we think this case is decisive of the question involved in the instant case upon the facts as found by the court and incorporated into its opinion.

Second: The court having found that the judgment in the district court of Custer County, Colorado against the Neptune Mining Company rested upon numerous claims assigned to the plaintiff Woodside, no one of which amounted to sufficient to confer jurisdiction upon the Federal Court and that plaintiff Woodside was not the owner of any part of said judgment except the sum of $162.36. We contend that the fact of the existence of the judgment obtained in Custer County, Colorado, conferred no right whatever upon the plaintiff Woodside to maintain an action in the Federal Court counting upon said judgment other than he acquired as to the several claims not reduced to judgment, because he was not the owner of the judgment and had no interest in the judgment notwithstanding it was in his name except as to his individual claim of $162.36 and this fact is found by the court in its opinion based upon the evidence of the plaintiff as to the ownership of this judgment, which evidence is

incorporated into and is a part of the opinion and from which we quote as follows:

> "I have no interest in any of said claims or judgment except my individual claim. The actual ownership of the said judgment and proceeds thereof and the accounts and the proceeds thereof belong to the several assignors * * * ".

And thus the actual ownership of this judgment appears without reference to the validity of the judgment and it conclusively appearing that the plaintiff did not own it or any part of it except $162.36, but that it belonged to and was owned by the several persons who originally had claims against the Neptune Mining Company and that the judgment rested upon these several claims, the judgment comes within and is ruled by the announcement of this court in Waite vs. Santa Cruz, 184 U. S., 302-325 and the other cases above cited, including those cited in the opinion of the Hon. Henry T. Reed.

Third: Assuming that the pleadings in the Federal Court presented the issues upon which the opinion of the court is founded and that the issues thus presented are to be considered as a part of the opinion of the court, the question of the ownership of the plaintiff of the several claims upon which he counted, including the judgment of the district Court of Custer County, Colorado, was directly in issue by the answer of the defendants. (Abst. 54).

To establish the question of ownership evidence was received, and in respect to this the defendants were able to and did establish the want of ownership of the judgment, by the plaintiff himself and in passing upon the question of whether the plaintiff was in *fact the owner of the judgment* included in his complaint the court incorporated into and made a part of its opinion the evidence of Woodside.

On this state of facts the question presented is whether the Circuit Court was justified in refusing to take jurisdiction of a case where only one of the real parties in interest was before the court and owned but $162.36 of the judgment.

Section 914 of the Statutes of the United States provides:

> "The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be, to the practice, pleadings and forms and modes of proceeding existing at the time in like causes in the courts of record of the state within which such Circuit or District Courts are held, any rule of court to the contrary notwithstanding."

Section 3459 of the Code of Iowa provides as follows:

> "Every action must be prosecuted in the name of the real party in interest but an executor or administrator, a guardian, a trustee of an express trust, a party with whom or in whose name a contract is made for the benefit of another, or parties expressly authorized by statute, may sue in his own name without joining with him the party for whose benefit the action is prosecuted."

This section of the Iowa Code in a suit in the Federal Court in the State of Iowa, is controlling and will be recognized by the Federal Courts in determining whether a suit is brought in the name of the proper party. Edmunds vs. Illinois Central Ry. Co., 80 Fed. 78.

Possibly had there been no evidence as to the actual ownership of the judgment obtained in the district court of Custer County, Colorado and described in the opinion, it would have required no other evidence to establish the plaintiff's right to maintain an action (providing he could count upon the judgment in the instant case) than the judgment itself, and this possibly might be true as to any of the alleged assignments of accounts as to the plaintiff other than the written assignments. But as shown by the record presented to this court evidence other than the judgment and written assignments was received and from this the fact was disclosed that

the plaintiff was not the *real owner* and was not the *real party* in interest. Therefore upon the record presented to this court we have the actual fact that the plaintiff was not and is not the real *party* in interest in the action and was and is not the actual owner of either the judgment or the accounts; and in dismissing the case for the want of jurisdiction, the Federal Court is sustained by the cases cited in the courts' opinion and its acts in conformity with Section 3459 of the Code of Iowa, and section 914 of revised Statute of the U. S.

We also contend that when it is made to appear to the Federal Court that for the purpose of conferring jurisdiction upon the court a plaintiff is attempting to add to a claim owned by him insufficient in amount to confer jurisdiction, other claims of other owners. It is the duty of the court under Section 5 of the Act of March 3, 1875 upon its own motion to stop all further proceedings and dismiss the suit the moment anything of the kind appears. Therefore in the instant case when the evidence before the court disclosed the facts as shown in the record the court was not only justified by the provisions of the Statute in dismissing the plaintiff's case for want of jurisdiction but it was his plain duty so to do.

Fourth: Again assuming that the pleadings presenting the issues upon which the opinion of the court is founded are to be considered as a part of the opinion of the court, among the questions presented was, whether there had been a failure upon the part of the officers and directors of the Neptune Mining Company to file the annual report as required by the Statutes of the State of Colorado, and whether, after default in this respect debts had been contracted by the Neptune Mining Company, within the period as provided by the Statutes of the State of Colorado, and whether the defendants in error were officers and directors of the Neptune Mining Co. whose duty it was to have filed such report under the Statutes of the State of Colorado; and whether these persons named as defendants were the officers and directors liable for the debts contracted within a certain period by said Neptune Mining Company. (Amended Complaint, Abst. 24* * * 49).

By the amended and substituted answer of the defendants and the amendment thereto (Abst. 17-22), the allegations of the complaint were denied except that the plaintiff was a citizen of the State of Colorado and that the Neptune Mining Company was a corporation under the laws of the state of Colorado.

Under the issues presented, it appears from the opinion that the plaintiff in error, produced evidence tending to establish the allegations of his complaint, and under the issues thus presented it appears that before the plaintiff in error could recover it would be necessary for him to establish that the defendants named were officers and directors of the Neptune Mining Company; and that they did fail to make a report as provided by the Statutes of the State of Colorado; and that within the period provided by the Statutes of the State of Colorado after default in respect to the annual report; and that the debts were actually contracted by the Neptune Mining Company; and that the persons named as defendants were actually the officers and directors of the said Mining Company at the time of the default; and at the time of the contracting of the debts by said Mining Company.

That plaintiff attempted to establish the allegations of his complaint in the respect above named appears from the opinion of the court, so that in determining the scope of the opinion of the court and the foundation upon which it rested, the opinion of the court is not to be limited to the proposition that the only reason the court dismissed the plaintiff's action for want of jurisdiction was as claimed by the plaintiff in error but the scope of the opinion and the foundation upon which it rests is to be considered in the light of the issues presented and the evidence received and considered by the court as disclosed by its opinion. Considered in this light we contend that the question specifically presented by the plaintiff in error, under his assignment of error, does not correctly state the question involved nor does the determination of the jurisdictional question depend upon or rest upon the statements of fact specified in the errors. On the contrary under

the facts contained in the opinion the question of whether the plaintiff could lawfully take an assignment of accounts from numerous creditors of the Neptune Mining Company in the State of Colorado sufficient in amount in the aggregate to confer jurisdiction upon the Federal Court and maintain an action in the Federal Court therefore does not arise. Nor does the question of whether the plaintiff could lawfully take an assignment of claims of numerous creditors of the Neptune Mining Company in the State of Colorado and sue and recover a judgment thereon under the laws of the State of Colorado in an amount sufficient to confer jurisdiction upon the Federal Court.

The question however of whether the plaintiff in error did in fact count upon the judgment of the district Court of Custer County, Colorado and whether he could lawfully do so, is involved.

Fifth: The plaintiff in error in his amended complaint in the Federal Court did not in fact count upon the judgment recovered in the District Court of Custer County, Colorado against the Neptune Mining Company, but did declare upon the contract between the Neptune Mining Company as a corporation and numerous persons who it was alleged had sold and delivered property to the Neptune Mining Company and had performed work and labor for the Neptune Mining Company between the first day of August, 1902, and the first day of March, 1903. The said corporation incurred and contracted debts to and in favor of the following named persons, firms and corporations: (here follows a list of the individuals, firms and corporations.) It is then further averred that each and every of said claims were sold and assigned to the plaintiff Wm. Woodside and that the plaintiff Wm. Woodside brought an action against the Neptune Mining Company in the District Court of Custer County, Colorado, for the sum of $2724.46 and recovered judgment therefore. (Abst. 26-28).

In Gregory vs. German Bank of Denver, 3 Col. Rep. 332, after construing that the statutes of Colorado imposing a

liability upon the officers and directors for failure to file an annual report of a corporation, is penal it is held that the foundation of the right of recovery is for a statute penalty and not as a debt of the officers and directors. See also to the same effect Hazleton vs. Porter, 17 Col. App. 1; Colorado Iron & Fuel Co., vs. Lenhart, 6 Col. App. 511.

The Supreme Court of the State of Colorado cites as authority for its construction of the Statute and of its holding that in an action to recover against the officers and directors, it is for a statute penalty and not a debt against the officers and directors. The New York cases referred to in the case of Chase vs. Curtis 113 U. S., 452, and National Park Bank vs. Ramsen, 158 U. S., 342, which includes the case of Miller vs. White, 50 N. Y., 137 cited in Chase vs. Curtis, 113 U. S., 452, from which we quote as follows:

> "The complaint set forth the recovery of the judgment against the company but not the original cause of action against it on which the judgment was founded. The defendant moved for a dismissal on this ground which was refused and judgment was entered in favor of the plaintiff on the production in evidence of the judgment roll. This was held to be erroneous on the ground that the judgment was not competent as evidence of any debt due from the corporation and that no action could be maintained thereon against the trustees under the section of the act."

Judge Peckham in delivering the unanimous opinion of the court said:

> "It will be perceived that this is a highly penal act, extremely rigorous in its provisions. It is absolute that the trustees shall be liable for all the debts of the company, if the report be not made, no matter by whose fault. If one of the trustees did all in his power to have it made, yet if the president, or a

> sufficient number of his co-trustees to constitute a majority, declined to sign it, or if the president and secretary declined to verify it by oath, the faithful trustee seems to be absolutely liable as well as those who refuse to do their duty". It was accordingly held, "that as against these defendants, the judgment did not legally exist, as they were neither parties nor privies to it. * * * * It is not a judgment as to these defendants; no action could be maintained thereon against them. * * * Nor is the judgment *prima facie* evidence of the debt as against these defendants."

The judgment recovered in Custer County, Colorado, against the Neptune Mining Co., was not against the defendants in error and as is said, as to them it is not a debt and the judgment never had any legal existence. The plaintiff in error in filing his amended and substituted complaint in the instant case seems to have accepted this view of the judgment and therefore alleged the original cause of action and did not count upon the judgment. Under the allegations of the amended complaint before the plaintiff in error could have recovered against the defendants in error, it became necessary for the plaintiff to establish the cause of action alleged in his complaint and as appears from the opinion of the court, the plaintiff attempted to do this and did not content himself with introducing simply the judgment roll and resting. The position of the plaintiff in error now contended for and the specifications stated in his brief are:

> "Stating the error claimed more specifically they are, that the court below was in error in holding that plaintiff in error was not the owner of or the real party in interest in any of the claims against the mining company, that had been assigned to him for the reason given by the court that the claims had been assigned to him for collection only."
> That the court also erred in holding:

> "That the merger of the claims so as to obtain a judgment for more than $2000 with the purpose of enabling plaintiff to sue in a Fdeeral Court was grounds for dismissal of the action." Also in holding "that the court could go back of the Judgment to ascertain upon what it was founded and who were the real parties in interest to determine the question of jurisdiction."

We contend that the above specifications of error have nothing to rest upon unless there is eliminated from the opinion of the court in the first paragraph of the specifications above the evidence of the plaintiff quoted in the opinion and incorporated into it and the other reasons announced by the court; and confine the opinion to the one named in the specifications of error to-wit:

> "For the reason given by the court that the claims had been assigned to him for collection only, when the full scope of the opinion is considered and the issue as presented to the court upon which it was passing and the evidence that was before the court upon which it was basing its conclusions and which evidence is indicated in the opinion, it will be found that the claim of the plaintiff in error that the court's reason was limited to the statement that the claims had been assigned for collection only," is not not correct in point of fact.

The second paragraph of the specifications of error above quoted is not justified from the record and does not rest upon the facts found by the court nor does it fairly present the question decided by the court. The court did not ground its opinion upon the proposition that the merger of claims so as to obtain a judgment for more than $2000, for the purpose of enabling plaintiff to sue in a Federal Court was grounds for dismissal of the action. On the contrary the reason of the court as appears from the whole opinion was; that notwith-

standing the judgment in favor of Woodside in the court of Colorado, his claim was based upon the Statutes of Colorado to recover a statutory penalty and that the reducing of the original claims to judgment against the Neptune Mining Company in no manner changed the original claims of the several persons each of which was insufficient in amount to confer jurisdiction upon the Federal Court; and under the issues and the law the court had a right to look behind the judgment and ascertain upon what it rested. It had the undoubted right to do so. Huntington vs. Attrill, 146 U. S., 299.

In this connection the court also considered the evidence of the plaintiff in respect to the judgment and as to who owned it and this evidence it incorporated into and made a part of its finding and opinion and from this the court concluded that notwithstanding the judgment in the Court of Colorado that the plaintiff had no interest in it and did not own the judgment except as to his individual calim of $162.36.

As to the third paragraph of the specifications of error above quoted, the court was not required under the state of the record to go back of the judgment to ascertain upon what it was founded and who were the real parties in interest and this for the reason that the plaintiff in error in order to establish his cause of action against the defendants had alleged in his complaint the cause of action upon which the judgment rested and had by his evidence established the cause of action upon which the judgment did rest and also the fact that the plaintiff did not own the judgment. It would not have been permissible for the plaintiff in error to count upon the judgment of the District Court of Custer County, Colorado, because this judgment did not establish a debt against the defendants in error as officers and directors. The production of the judgment roll in said case would not have been sufficient to establish a liability against the officers and directors as was held by the New York Court and approved by this court in Chase vs. Curtis, 113 U. S., 452 and National Park Bank vs.

Ramsen, 158 U. S., 342. Nor would the production of the judgment roll in said cases have been sufficient to recover against these defendants as officers and directors in the state of Colorado because as held in Gregory vs. German Bank of Denver, 3 Col. Rep. 332, and Hazleton vs. Porter, 17 Col. App. 1, and other cases, Colorado Iron & Fuel Co., vs. Lenhart, 6 Col. App. 711, that the right to recover against officers and directors of a corporation is not on the basis of a debt against them but because of a statute penalty imposed by the laws of Colorado.

We have thus established not only the fact that the plaintiff in error did not count upon the judgment of the plaintiff Woodside, recovered in the State of Colorado but the further proposition that the plaintiff in error could not have counted upon the judgment in the State of Colorado in an action against the defendants in error on the basis that the judgment constituted a debt against the defendants in error. Therefore when it is claimed by the plaintiff in his specifications of error that the circuit court in dismissing the plaintiff's cause of action for want of jurisdiction was in error in the particular named, we submit there is no real basis or foundation for such alleged error and we further submit that the plaintiff in error has wholly misconstrued the scope of the opinion of the Circuit Court.

IV

REASONS WHY THE AUTHORITIES CITED BY THE PLAINTIFF ARE NOT IN CONFLICT WITH THE CASES CITED IN THE OPINION OF THE CIRCUIT COURT AND OTHER CASES RELIED UPON BY THE DEFENDANT IN ERROR

The contention of the plaintiff in error that in order to warrant the court in dismissing the plaintiff's cause of action for want of jurisdiction it had to refuse to give full faith and

credit to the judgment recovered in the District Court of Custer County, Colorado, is answered by the fact that in determining whether the plaintiff owned the judgment it was established by the evidence of the plaintiff that he did not own the judgment but only $162.36 of it; also the fact established by evidence of the plaintiff that the cause of action upon which he sought to recover against the defendants in error was grounded upon the debts and claims of numerous citizens of the State of Colorado, held and owned by them against the Neptune Mining Company, a corporation of Colorado, and not owned by the plaintiff, but only added to the claim of the plaintiff in order to confer jurisdiction of the Federal Court, all of which facts appear in the opinion of the court so that when it is said that full faith and credit was not given by the court to the judgment against the Neptune Mining Company or that the court was required to refuse full faith and credit to the judgment of the District Court of Custer County, Colorado, in order to determine, as he did, that the plaintiff did not own the judgment and therefore could not count upon the judgment as a cause of action, it in no manner refused to give full faith and credit to the judgment. And the case of Huntington vs. Attrill, 146 U. S., 299, cited by plaintiff is not an authority to support the contention made by the plaintiff in error. But is an authority in support of the opinion of the Circuit Court in the instant case.

The case of Tabor vs. Commercial National Bank, 62 Fed. 383 does not establish a rule that a judgment can be counted upon to recover a statutory penalty against officers and directors of a corporation. The reason why the court permitted and approved of the right of the plaintiff to count upon the judgment in the Tabor case was that there was no question of the time when the debt was incurred as the corporation never filed any report at any time so that part of the statute holding the defendants as officers and directors liable for the debts of the corporation contracted within a certain time, was in no manner involved. Whereas in the instant

case the corporation did file reports and among the questions presented was whether the Neptune Mining Company contracted the debts in question *during a certain period of time when it was in default for want of an annual report.* The question of whether the debts in the Tabor case were required to be proved as *having been contracted within a certain period of time did not arise.*

Another distinction which we beg to point out between the Tabor case and this, is that in the opinion no distinction appears to have been made between the liability of a stockholder of a corporation for the debts of a corporation and the liability of the officers and directors. In most states there are statutes providing for the forming of corporations and providing how such corporations may be formed in order to exempt the stockholders from liability for the debts of the corporation. Under the provision of such statutes a failure in forming the corporation to comply with the statutes might operate to render the stockholder liable, but not for a statute penalty, but for a failure to comply with the statute creating the corporation.

The case of Frost vs. Invest. Co., (Minn.) 59 N. W., 308, cited in the opinion of the court recognizes the precise distinction which we have stated. The action in the Frost case was to recover against a stockholder for the *unpaid subscription to the stock of the corporation;* and under the provisions of the statute of the State of Minnesota an action against the corporation for its debts could be joined with an action to enforce stockholders liabilities. The distinction between the principle which governs in the instant case as to the liability of the defendants in error as officers and directors to recover a statute penalty and the Frost case is apparent. The distinction between the instant case and the Tabor case lies in the fact that no report was ever filed by the officers and directors of the corporation so that the necessity of proving that the debts were contracted within a certain time and under certain circumstances while the corporation was in default of a report was not required to be established.

The case of Montgomery vs. Whitehead, 40 Col. 332, is not in point for the reason that the action was against the stockholders to reach corporate assets wrongfully withdrawn and in the hands of stockholders and was not to recover a statute penalty. The principle upon which the right of a creditor of a corporation rests to pursue the assets of a corporation in the hands of stockholders, have no application to the recovery of a statute penalty. Under the statutes of the State of Colorado there is no joint liability upon the part of the officers and directors who fail to file the annual report and the corporation for the debts of the corporation contracted during the period it is in default. Hence the authorities cited by the plaintiff in error to the effect that in the absence of fraud and collusion, judgments against the corporation are conclusive against the stockholders as to the validity and amount of the creditors claim, have no application whatever to the question involved in the instant case.

Upon the question that under the laws of Colorado an assignment of a chose in action, note or other obligation may be made and if made in good faith carries with it all of the right and title of the assignor to the assignee and that an assignment may be made for the purpose of collection only and that an action may be maintained thereon are not in point upon the question involved upon the record in the instant case, and one of the answers to this contention is, that in the instant case the answer of the defendant in error specifically denied the ownership of the judgment recovered in the District Court of Custer County, Colorado, and of the several accounts upon which the plaintiff in error counted, so it was not a question of what consideration the plaintiff in error paid for the judgment or the accounts or whether he paid any, but whether he acutally owned the claims and was the real party in interest; on this question the plaintiff in error took evidence and among those who were called in behalf of the plaintiff and gave evidence was the plaintiff himself and in passing upon the ownership the court incorporated into and made part of his opinion the evidence of the plaintiff and from

the evidence of the plaintiff the court found and stated as a conclusion of its finding from the evidence of the plaintiff,

> "That as none of the claims or demands so assigned to the plaintiff are of sufficient amount to authorize an action thereon in a court of the United States, it seems clear this action cannot be maintained in this court."

and necessarily included within the above statement of the court must have been the finding that the plaintiff did not own any claim sufficient in amount to confer jurisdiction and that the judgment was not owned by the plaintiff.

How, then, does the question of whether the plaintiff could acquire by assignment or otherwise accounts, notes or other evidences of debt against the Neptune Mining Company, and assert them as the owner thereof even though his contract with the several persons was of the title and right for the purpose of collection only. The defendants in error were not in the position of one admitting that he owed the debt sued upon and pleading as a defense the want of consideration between the plaintiff and the person from whom he received the assignment of the debt. Keeping in mind that the basis of recovery of the plaintiff in the instant case against the defendants in error was for a statute penalty and not a debt and that as between the corporation which contracted the debt and the credit, or there is no joint liability between the officers and directors of the company and the corporation itself, and it seems to us makes a clear distinction between the cases cited by the plaintiff in error from the state of Colorado and other states upon this proposition and the question presented and to be considered by this court.

Had the evidence of the plaintiff in error established the fact that the plaintiff was the *actual owner* of the claims upon which he sought to recover the question of what he paid for them or what consideration passed, or whether his ownership was for the purpose of collection only would present a different question than the one which arises and was presented to the

Circuit Court in the instant case, plaintiff upon his own motion told the court that he did not own any of them and that he had no interest in any of the claims except his individual claim of $162.36.

Among the contention of the plaintiff in error in his brief is that judgments of a court of record upon personal service foreclooses all questions as to the right of the plaintiff to sue upon the claims assigned to him, as title to them and the character in which he held them were as against the defendant Neptune Mining Company, and all persons in privy with it, barred and determined. The trouble with this proposition is that the judgment of the district court of Custer County, Colorado was against the Neptune Mining Company, only and the defendants in error as officers and directors of the said company not in privy nor jointly liable with the Neptune Mining Company. Giving to the judgment all the force and credit of a judgment against the Neptune Mining Company it is entitled to as against the Neptune Mining Company, and keeping in mind that the liability of the officers and directors of the Neptune Mining Company is for a statute penalty for only the debts contracted during the year next preceeding the failure to file a report, it does not at all follow that this establishes a liability against the officers and directors for all debts contracted by the Neptune Mining Company, but only for such debts as was contracted by the Neptune Mining Company during the period in which the officers were in default of a report. Thus it is seen that the distinction above made as to the liability of the defendants in error because of the conclusiveness of the judgment against the Neptune Mining Company as affecting the liability of the defendants in error is clear and manifest.

Even if the plaintiff had a right to recover upon claims assigned to him against the Neptune Mining Company and did recover a judgment and that the assignment of the claims to the plaintiff in error carried with it whatever right the assignors might have to proceed against the officers and directors for a statute penalty it could not aid the plaintiff

in the instant case to recover upon the judgment as an independent cause of action.

To the record in the instant case this court is limited in its inquiry and from this it clearly appears that no such question as presented above can or will arise in the consideration of this case and this because the claims in the respects contended for are not in the case, the basis of recovery against these defendants as officers and directors is not one of debt or joint liability with the corporation nor one privy with the corporation.

Among the contentions of the plaintiff in error and authorities cited in his brief, is that the assignment of claims against a corporation held by different persons to one plaintiff for collection and for the purpose of suit in the Federal Court after judgment where obtained all of the assignors were citizens of Colorado and the defendants citizens of Iowa was a lawful and proper proceeding and has been upheld even where no one of the assigned claims amounted to $2000.

The answer to this contention and claim is (1) It does not arise upon the record in the instant case. The court in its dismissal of the case for want of jurisdiction did not ground its opinion upon any such proposition. If we should concede with the adverse citizenship existing, that it was lawful and proper to acquire claims no one of which was sufficient in amount to confer jurisdiction upon a Federal court but in the aggregate were sufficient to confer jurisdiction, an action might be maintained in the Federal Court by such holder of claims, it would not entitle the plaintiff in error to a reversal of the action in the instant case, for the reason that the opinion of the court is grounded upon the *fact that the plaintiff in error did not own* any such claims and did not undertake to maintain his action upon any such basis.

The question of whether the court was justified in making the finding which it did from the facts and circumstances in evidence, is not before this court nor involved in the errors assigned. On the contrary under the provisions of the Statutes of the United States by which the plaintiff in error

caused to be certified from the Circuit Court of the United States to this court, the reason the finding of the Circuit Court contained in the opinion is final and conclusive upon this court, so that the question of whether the court was justified in making the finding of fact which it did and the question of whether under all of the circumstances in evidence, such a finding was warranted or that the transactions as disclosed in the record would constitute a lack of ownership in the plaintiff are not involved.

(2) When the plaintiff by his own evidence stated that notwithstanding the judgment and the assignments to him of numerous citizens of Colorado of their several claims that he claimed no interest in them and had none in any of them except his individual claim and when he went further and stated that as to each of the several assigned claims including the judgment belonged to and were actually owned by the several persons to whom they originally belonged and the court upon this evidence found that the plaintiff was not the actual owner of claims sufficient in amount to confer jurisdiction upon this court, what has the cases cited by the plaintiff upon this proposition to do with the question.

Certain it is that none of these cases hold that an action can be maintained in the Federal Court because of diverse citizenship, which is not sufficient in amount to confer jurisdiction upon the court and certain it is that none of the cited cases hold that an action can be maintained because of diverse citizenship in the Federal Courts by a person who is not the real party in interest and who by his own showing states that he has no interest, except as to a small claim by adding to his own small claim the claims of others who are also citizens of the plaintiff's own state and thus confer jurisdiction upon the court.

The evidence of the plaintiff in error incorporated into the opinion of the court in the instant case, and the finding of the court upon the evidence and the issues, so conclusively established that in reality the attempt of the plaintiff in error was to confer jurisdiction upon the Federal Court of Iowa by

reason of diverse citizenship of a claim owned by him of $162.36, and an attempt to add to this claim that of numerous other citizens of the state of Colorado, no one of which was sufficient in amount to confer jurisdiction, and that the purpose in so bunching the claims was to save expense. It seems to us that the court could not do otherwise than dismiss the plaintiff's cause for want of jurisdiction and that in doing so it acted within the power and authority conferred upon it by the statutes of the United States and only discharged its plain duty in doing so.

We submit there is no reversable error in the record and the writ of error should be dismissed and judgment affirmed.

Respectfully submitted,

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For the Defendants in Error.

I hereby certify that the cost of printing the within Brief and Argument is $25.00.

J. W. JAMISON.